

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . May 12, 2014  
Debtor. . 10:00 a.m.  
 . . . . .

HEARING RE. (#4532) LETTER FROM EXPERT WITNESS MARTHA E.M. KOPACZ; (#4511) MOTION TO COMPEL WAYNE, MACOMB AND OAKLAND COUNTY, MICHIGAN TO PRODUCE A PRIVILEGE LOG FILED BY OFFICIAL COMMITTEE OF RETIREES, ANY REMAINING OBJECTIONS TO WRITTEN DISCOVERY (#4202) (#4508); (#4437) RESPONSE TO DISCOVERY -- OBJECTION TO SUBPOENA FROM THE OFFICIAL RETIREE'S COMMITTEE FOR DEBTOR -- FILED BY INTERESTED PARTY WAYNE COUNTY CORPORATION; (#4537) EXPEDITED MOTION TO WITHDRAW AS ATTORNEY BY BARBARA A. PATEK FOR THE LAW FIRM OF ERMAN, TEICHER, ZUCKER & FREEDMAN, P.C.; (#4409) MOTION TO COMPEL THE DEBTOR TO PROVIDE MORE SPECIFIC DESCRIPTIONS OF THE SUBJECTS THAT EACH FACT WITNESS WILL ADDRESS FILED BY INTERESTED PARTIES SYNCORA CAPITAL ASSURANCE, INC., SYNCORA GUARANTEE, INC.; (#4565) MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS FILED BY INTERESTED PARTIES SYNCORA CAPITAL ASSURANCE, INC., SYNCORA GUARANTEE, INC.; (#4557) MOTION TO COMPEL RESPONSES TO SYNCORA'S FIRST SET OF INTERROGATORIES TO THE CITY OF DETROIT (DOC NO. 4036) MOTION TO COMPEL RESPONSES TO INTERROGATORIES FILED BY INTERESTED PARTIES SYNCORA CAPITAL ASSURANCE, INC., SYNCORA GUARANTEE, INC.; (#4580) MOTION TO COMPEL FULL CLAWBACK OF DEBTOR'S DOCUMENT PRODUCTION AND RELATED RELIEF FILED BY CREDITOR ASSURED GUARANTY MUNICIPAL CORP.  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

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1           THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3           THE COURT: Good morning. We have a number of  
4 matters on our docket for today. Let me tell you what the  
5 order of them will be. We will start with the motion to  
6 withdraw and then move to Ms. Kopacz's letter and then the  
7 motion to compel the clawback and then the motion to compel  
8 the counties to provide a privilege log and then the three  
9 Syncora motions to provide more specific description of  
10 witnesses' subjects, to compel the production of documents  
11 and to compel responses to interrogatories and then  
12 everything else. Okay. The motion to withdraw.

13           MS. PATEK: Good morning, your Honor. Barbara  
14 Patek, Erman, Teicher, Zucker & Freedman. As the Court is  
15 aware, throughout these proceedings Erman Teicher has  
16 represented the four Detroit public safety unions, the  
17 Detroit Police Command Officers Association, the Detroit  
18 Police Lieutenants and Sergeants Association, the Detroit  
19 Police Officers Association, and the Detroit Fire Fighters  
20 Association. As a result of the exhaustive efforts that took  
21 place in mediation, two of the four public safety unions have  
22 reached a resolution of their main economic issues with the  
23 city and will be supporting the plan of adjustment. The  
24 Detroit Police Officers Association and the Detroit Fire  
25 Fighters Association have not been able to reach agreement

1 with the city. As a result, we find ourselves in a situation  
2 where we have clients who going forward are going to be in  
3 directly adverse positions, and we have obtained the consent  
4 of all clients, their representatives in the courtroom of all  
5 the clients, and we are seeking an order allowing us to  
6 continue representing the two objecting public safety unions.

7 THE COURT: All right. Thank you. Is there anyone  
8 who'd like to say anything about this matter? The Court  
9 concludes that the record does establish cause for the relief  
10 sought. The motion is granted. You may submit an order, and  
11 the Court will waive further presentment.

12 MS. PATEK: Thank you, your Honor.

13 THE COURT: All right. Stand by one moment, please.  
14 All right. Let's turn our attention then to Ms. Kopacz's  
15 letter.

16 MS. KOPACZ: Good morning, Judge. I sent you a  
17 letter last week asking for clarification of the  
18 confidentiality provision that is part of the order  
19 appointing me as well as a request to hire counsel for  
20 limited purposes. I tried to provide you some examples in  
21 the letter of questions that are being raised by parties  
22 which, again, I want to be real clear. I'm not complaining.  
23 I understand that people are concerned that if they give me  
24 information, other people may have access to it. Parties are  
25 concerned if they provide me information that has never been

1 provided to another party, that somehow they're waiving  
2 privilege. There's also been a request to participate in  
3 interviews that I conduct on some basis, so really just here  
4 asking for some guidance and some help.

5 THE COURT: Okay. Thank you for your letter. I  
6 want to try to get this resolved as promptly as possible, and  
7 I seek the input of counsel here, too. I think we want to  
8 balance the interests of all concerned in this matter with my  
9 interest and I assume the city's interest in having  
10 Ms. Kopacz do her work as efficiently as possible. Frankly,  
11 in my order, when I referred to confidentiality, I obviously  
12 was not clear enough, but what I had in mind was little more  
13 than not talking with anyone not directly associated with the  
14 case about the case or about your work, so, for example,  
15 media or other strangers to the case. I had little more in  
16 mind than just that.

17 In terms of the confidentiality of the information  
18 you gather vis-a-vis other parties in the case, what I  
19 foresaw was that all such information that you had gathered  
20 during your investigation would either be a part of your  
21 report or a part of the attachments to your report where you  
22 reflected in your log what communications you had had with  
23 various people who had provided you with information and some  
24 description of what that information was, so I don't know.  
25 Does that help to limit the conversation to any extent?



1 MS. KOPACZ: No. I'm sorry. No. It really goes to  
2 the information that I am trying to gather. Okay. So, for  
3 example, there are creditor constituencies whose financial  
4 advisors I have met with, talked with, who have information  
5 from their work, their analyses, that I believe would be very  
6 helpful to my task.

7 THE COURT: Um-hmm.

8 MS. KOPACZ: And while those parties have not said  
9 they're unwilling to provide me with their financial  
10 advisors' work product, they are concerned that if they  
11 provide it to me that it then becomes available to others.  
12 There's also a concern some parties have raised if they give  
13 me information that they have never given anyone else that  
14 they would waive privilege to that. And, again, I don't  
15 know.

16 THE COURT: What kind of privilege is that?

17 MS. KOPACZ: I have no idea.

18 THE COURT: You don't know.

19 MS. KOPACZ: I would -- maybe some of the attorneys  
20 are willing to speak to their concerns.

21 THE COURT: Okay. Anyone want to address this?

22 MR. HACKNEY: Your Honor, good morning. Stephen  
23 Hackney on behalf of Syncora. I guess what I would say  
24 briefly is that I actually think this first question is  
25 relatively simply solved by reference to the federal rules

1 because I think Ms. Kopacz is required to produce all the  
2 facts and data that she considered --

3 THE COURT: Um-hmm.

4 MR. HACKNEY: -- so I don't think there's any choice  
5 around that, and I think that given that rule, what I think  
6 we want creditors to know is that if you give her something,  
7 you should expect that it will be produced either because she  
8 does so voluntarily or because it's often customary to  
9 subpoena the expert anyway to the extent they have documents  
10 not attached, so I actually view that as an --

11 THE COURT: Yeah.

12 MS. KOPACZ: -- unfortunate fact of the way the  
13 federal rules work, but --

14 THE COURT: I'm inclined to agree with that. Does  
15 anyone disagree with that?

16 MR. MARRIOTT: Good morning, your Honor. Vince  
17 Marriott, Ballard Spahr, EEPK. No, I don't, which is sort of  
18 what raises the issue insofar as materials prepared by our  
19 experts would be subject to a privilege either as work  
20 product or in the form of materials prepared by consulting  
21 experts rather than testifying experts which would otherwise  
22 not be discoverable becomes discoverable the minute we give  
23 it to Ms. Kopacz, and that's the --

24 THE COURT: Right.

25 MR. MARRIOTT: That's the nub of the issue.

1           THE COURT: Right. So I think the answer here,  
2 Ms. Kopacz, is that anything that anyone gives you is subject  
3 to eventual disclosure, and you cannot assure anyone  
4 otherwise.

5           MS. KOPACZ: Okay.

6           THE COURT: If someone is concerned about whether  
7 information that you are asking for should be given to you on  
8 this ground, I suppose your response to them should be to  
9 consult with whoever hired them or whoever they feel  
10 comfortable consulting with to determine whether the  
11 information is privileged and should be subject to  
12 nondisclosure to you.

13           MS. KOPACZ: Okay. So that will limit what I am  
14 available to review and look at.

15           THE COURT: It will.

16           MS. KOPACZ: Yeah. Okay. And I will just --

17           THE COURT: And I ask you and I urge you to keep  
18 track of information requests that you make that are denied  
19 on --

20           MS. KOPACZ: Right. I have --

21           THE COURT: -- the grounds that whoever wants to  
22 keep it confidential has elected to do so.

23           MS. KOPACZ: I have the situation now with the city  
24 where members of my team who are working diligently with  
25 Ernst & Young and Conway MacKenzie on understanding the

1 models, the projections, how they've changed over time and  
2 the inputs to that. Any information that has not been  
3 provided to the parties already is being withheld from us,  
4 so, you know, again, there's nothing I can do other than  
5 simply say that I've asked for -- you know, perfect example  
6 is I've asked for the economics behind the settlement with  
7 the unions to really understand how the -- how those costs  
8 are going to be incorporated over time and what the cost of  
9 that is going to be. That has not been provided to anyone.  
10 It does exist, but I don't have it, so, again, I don't know  
11 what else I do at this point other than, you know, use the  
12 information that people are willing to give me. Is there any  
13 way I can --

14 THE COURT: Well, hold on.

15 MS. KOPACZ: Okay.

16 THE COURT: Hold on that judgment for a moment. Is  
17 there someone here from the city who'd like to defend that  
18 position? And before you do so -- oh, I'll let you put your  
19 name on the record.

20 MS. LENNOX: Thank you, Judge. Heather Lennox of  
21 Jones Day on behalf of the city.

22 THE COURT: I'm disappointed to have to remind you  
23 that the city has the burden of proving the feasibility of  
24 the plan and that it strikes me, at least, that any and all  
25 information that goes to the issue of feasibility is

1 discoverable not only by my own witness but by everybody.

2 MS. LENNOX: Yes, Judge. Let me clarify.

3 THE COURT: And one more thing. I said to Jones Day  
4 before, and I'm disappointed that I have to repeat it, the  
5 fact that something is subject to a privilege doesn't mean  
6 you have to claim it.

7 MS. LENNOX: Understood, your Honor.

8 THE COURT: It could very well be in your client's  
9 best interest on an issue as to which the city bears the  
10 burden of proof not to claim privilege as to something which  
11 could be claimed privilege.

12 MS. LENNOX: Or, your Honor, there is another way to  
13 work around it, which we have proposed on this particular  
14 item to Ms. Kopacz, where there are some information that was  
15 subject to mediation privilege. We have decided to go and  
16 prepare a comprehensive comparison that Ms. Kopacz has asked  
17 for instead of giving her piecemeal and incomplete data. We  
18 are preparing a comprehensive piece of data to give to her to  
19 comply with the requests she has for these kinds of  
20 comparisons, so we have been, I think, extraordinarily open  
21 with Ms. Kopacz, and we do want her to have full access to  
22 information so she can prepare a fair report. We are  
23 absolutely in accord with that. And where we are running  
24 into certain either incomplete information -- we are  
25 endeavoring to work around it and prepare her another form of

1 the information that she needs, and we are, indeed, working  
2 on this very item right now.

3 THE COURT: With the understanding that eventually  
4 it will be disclosed to the Court and the other parties.

5 MS. LENNOX: Understood, your Honor.

6 THE COURT: All right. Ms. Kopacz, I'm not sure  
7 that we can make any more progress on this at this time. I'm  
8 willing to accept Ms. Lennox's representation --

9 MS. KOPACZ: Okay. That's fine.

10 THE COURT: -- that they want you to have all the  
11 information that you need, and I would encourage you to be  
12 patient with them as they develop that for you, not too  
13 patient because the clock is ticking, and that if you do run  
14 into a situation where you find that there is information  
15 that you need that has not been produced or the production is  
16 refused to write me another letter.

17 MS. KOPACZ: Okay. I will. I will do that.

18 THE COURT: All right. Any other questions apart  
19 from the attorney question?

20 MS. KOPACZ: The other question had to do with  
21 attorney participation in interviews.

22 THE COURT: Um-hmm.

23 MS. KOPACZ: I'm not opposed to that. I just didn't  
24 know, you know, what the boundaries were for that or  
25 whatever, so --

1 THE COURT: Um-hmm, um-hmm. Let's ask counsel their  
2 views on this question.

3 MS. KOPACZ: Okay.

4 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper  
5 Hamilton. We want to participate in the form of just  
6 watching, listening, and taking notes. We do not want to  
7 actively participate in questions or interact with the expert  
8 during this process. We think if our witnesses are present,  
9 we should be able to have a representative of Jones Day or  
10 Pepper there just to take notes. That's all we want to do.

11 THE COURT: So this is a request that applies to the  
12 individuals on your witness list, not everybody else?

13 MR. HERTZBERG: Correct.

14 THE COURT: Okay. And, Ms. Kopacz, you say you  
15 don't oppose that?

16 MS. KOPACZ: I don't oppose it at all because it  
17 won't affect the questions I ask. It won't affect what I'm  
18 seeking to find from these --

19 THE COURT: Okay.

20 MS. KOPACZ: -- individuals. I don't know if it  
21 will affect the individuals obviously in how they interact  
22 with me, but so be it. And then the only other thing that I  
23 did want to clarify -- and I do have agreement with the city,  
24 but I wanted you to be aware of it. In the ongoing day-to-  
25 day work that's going on between my team and people at the

1 city, counsel for the city has said they don't need to  
2 participate in those working sessions, so --

3 THE COURT: Right.

4 MS. KOPACZ: And I think, again, it's more just an  
5 efficiency concern on my part as my team --

6 THE COURT: Right. Well, so what Mr. Hertzberg said  
7 was they only want to be present when you talk to the people  
8 on their witness list.

9 MS. KOPACZ: Talk to the witnesses on their list;  
10 right.

11 THE COURT: And, Mr. Hertzberg, I hope counsel will  
12 be available so that Ms. Kopacz's efficiency in doing those  
13 discussions and interviews will not be impaired.

14 MR. HERTZBERG: Yes. We have someone scheduled to  
15 participate in that process.

16 MS. KOPACZ: Yeah.

17 MR. HERTZBERG: It will not be an issue.

18 MS. KOPACZ: Yeah.

19 THE COURT: Okay.

20 MS. KOPACZ: So --

21 THE COURT: Anyone else want to be heard on this?

22 MR. HACKNEY: Your Honor, Stephen Hackney on behalf  
23 of Syncora. Sort of an unprecedented situation here, but  
24 what we were wondering was just to prevent there from being  
25 sort of an asymmetry between who knows what about these



1 interviews, could there be creditor representatives, so  
2 rather than having 20 people in the interview, can there be a  
3 DWSD --

4 THE COURT: For what purpose?

5 MR. HACKNEY: For understanding what information is  
6 being conveyed to Ms. Kopacz. You can ask about it after in  
7 a deposition, but remember the city will be there taking it  
8 live, and it's often difficult for people to remember in  
9 depositions later what was discussed in interviews that  
10 happened over a period of time, so --

11 THE COURT: Sir. I'll get back to you, Mr.  
12 Hertzberg. Let me guess. You join in the request.

13 MR. NEAL: No.

14 THE COURT: No?

15 MR. NEAL: No.

16 THE COURT: Object to the request.

17 MR. NEAL I stand neutral. Your Honor, Guy Neal,  
18 Sidley Austin, for National Public Finance Guarantee. I just  
19 simply rose to echo what Mr. Hertzberg said and to give you a  
20 concrete example. Ms. Kopacz will be meeting with our  
21 consulting experts tomorrow, and I plan to join in that  
22 meeting --

23 THE COURT: Um-hmm.

24 MR. NEAL: -- along the same lines that Mr.  
25 Hertzberg said, just simply be there.

1 THE COURT: Okay.

2 MR. NEAL: This consultant is not a testifying  
3 witness. That's the only clarification I rise to make clear.

4 THE COURT: Okay.

5 MR. NEAL: But I will simply be there as an observer  
6 largely to protect the privilege.

7 THE COURT: Okay.

8 MR. NEAL: And is that okay with you, Ms. Kopacz?

9 MS. KOPACZ: Absolutely.

10 MR. HERTZBERG: Your Honor, we're not looking to sit  
11 in when the other witnesses are interviewed. We have no  
12 desire to. For example, if Syncora witnesses are being  
13 interviewed, we have no desire to sit there. I think it  
14 would be -- it should be the same with our witnesses. We  
15 just want to observe what our witnesses are saying so when we  
16 prepare them for trial we know what has gone on.

17 THE COURT: Yeah. It strikes me that the interests  
18 of parties other than the party whose witnesses or employees  
19 are being interviewed can be and are being adequately  
20 protected by the normal discovery and trial process, so I'll  
21 limit the participation or attendance of lawyers in  
22 Ms. Kopacz's interviews to lawyers for the entity that has  
23 either employed the witness who she's interviewing or are  
24 employees of the party who the attorney represents.

25 MR. HERTZBERG: Your Honor, I'd like to just clarify

1 one thing based upon the statement you made. There are  
2 witnesses that we've put on our witness list that we haven't,  
3 quote, employed or are not employees of the city, but they're  
4 listed witnesses.

5 THE COURT: Yeah. If they're on your witness list,  
6 you can be there.

7 MR. HERTZBERG: Okay. Thank you.

8 THE COURT: And the same with other parties' witness  
9 lists. Okay. Any other questions before we get to the  
10 attorney question?

11 MS. KOPACZ: Yes. There are many people that I have  
12 already interviewed both in terms of the city's side and in  
13 terms of the creditors' side. Those are clearly all on my  
14 contact log.

15 THE COURT: Um-hmm.

16 MS. KOPACZ: I don't really need to go back and redo  
17 those to have somebody participate? Okay.

18 THE COURT: No.

19 MS. KOPACZ: Okay.

20 THE COURT: What's done is done.

21 MS. KOPACZ: Thank you.

22 THE COURT: The attorney question?

23 MS. KOPACZ: Yes, please.

24 THE COURT: Okay. So tell me why you think you need  
25 an attorney because I need to be convinced.

1 MS. KOPACZ: You need to be convinced. I don't  
2 believe this will be the last of these sorts of questions  
3 and, again, either concerns that the city has, concerns the  
4 creditors have --

5 THE COURT: This is your polite way of saying we  
6 have a contentious case.

7 MS. KOPACZ: Yes. Okay. And while I do believe  
8 that at this stage everybody does believe it's probably in  
9 their best interest to help me as much as they can, right, I  
10 am -- I have spent, to my way of thinking, too much time  
11 addressing these issues when I'm really not qualified to  
12 address them. We're here now today, and I think that's good,  
13 and we're getting better clarity. I think it would be  
14 helpful to me if I had someone who could speak to lawyers  
15 with the same, you know, understanding, knowledge of what the  
16 rules are, how this works. I think we could have ironed much  
17 of this out without having to come before you if I had had  
18 counsel, but I was just -- I was floundering.

19 The other thing that does concern me is when it  
20 comes time for my deposition, I have -- I am not concerned  
21 about my own testimony. I'm not concerned about my report.  
22 I have no legal conclusions to reach as part of my job. With  
23 that said, I do believe that as part of the deposition, part  
24 of my testimony in court, you'll protect me when I'm here.  
25 When I'm in the consolidated deposition, my sense is that,

1 you know, attorneys will try to make me their witness or try  
2 to not make me their witness, and just knowing what the  
3 boundaries are of what I should say and not say, I'm just --  
4 I'm concerned.

5 THE COURT: Of course, at your deposition I'm only a  
6 phone call away.

7 MS. KOPACZ: Yes, I would guess, but I can't talk to  
8 you, remember?

9 THE COURT: Well, no. In that context --

10 MS. KOPACZ: I can?

11 THE COURT: -- I would permit that, absolutely. If  
12 you have a question about whether you should answer a  
13 question or not answer a question or if parties object and  
14 you're not comfortable answering a question until an  
15 objection is resolved --

16 MS. KOPACZ: Yeah. You know, I have -- I'm already  
17 developing my own list of questions as to -- I've collected a  
18 lot of data, and we're continuing to collect a lot of data.  
19 And I have asked people to give me information that they  
20 think might help me. Okay. Whether or not it becomes  
21 information that I deem helpful, whether it becomes stuff  
22 that I include in my report or not, I don't really know. And  
23 to be honest with you, I don't know what I do from a  
24 production perspective about all that sort of stuff once I  
25 put my report together and whatever, so --

1           THE COURT: Um-hmm. Well, I've already imposed your  
2 fees and expenses on the city, so let me ask the city if it  
3 has a position on whether it would be willing to pay the  
4 expenses of an attorney for Ms. Kopacz given the limited  
5 purposes for which she seeks counsel.

6           MS. LENNOX: Your Honor, again, for the purpose of  
7 facilitating this process, which we believe is a very helpful  
8 one to the Court and to the parties, the city would be  
9 willing to do that as long as they are limited -- very  
10 limited, as your Honor would direct.

11          THE COURT: All right. All right. You have my  
12 authorization and the city's to hire counsel with the  
13 understanding that their participation will be as limited as  
14 you have described and with the further understanding that I  
15 am still here to answer your questions and help facilitate  
16 your work.

17          MS. KOPACZ: Thank you, and I really appreciate  
18 that. And thank you. I appreciate it. We're rolling.

19          THE COURT: Okay.

20          MS. KOPACZ: All right.

21          THE COURT: I'll prepare an appropriate order.

22          MS. KOPACZ: Thank you.

23          THE COURT: Okay. Let's turn our attention to the  
24 motion to compel full clawback of debtor's document  
25 production.

1 MR. SCHWINGER: Good morning, your Honor.

2 THE COURT: Sir.

3 MR. SCHWINGER: Robert Schwinger from Chadbourne &  
4 Parke for Assured Guaranty. The city produced documents, I  
5 guess, on Tuesday night by FedEx'ing out to various parties a  
6 hard drive with its document production. People got them on  
7 Wednesday and started to load them and look at them. By  
8 Thursday morning, at least at the earliest that we're aware  
9 of, the city was contacted by one of the parties to say that  
10 they had discovered they were mediation-related documents  
11 that were covered by the mediation privilege and order in the  
12 production. The city --

13 THE COURT: And did you get this production as well?

14 MR. SCHWINGER: We did. Apparently all the parties  
15 got the exact same production. We understand that the city  
16 responded with an e-mail. One of the attorneys sent back an  
17 e-mail saying, "Yes, we know there are problems with the --  
18 with including some of these documents in the production.  
19 We're going to do a clawback." We then -- I personally sent  
20 the city a response, and I said, "Look, don't start clawing  
21 back individual documents to put a spotlight on what's in  
22 there," because, you know, you can't unring a bell when  
23 people see it and then people say, well, if I see one  
24 mediation-related document, they'll start looking for what  
25 else might be in there. I said, "Look, you know, it's early

1 on. We just got the disks yesterday. Just claw back  
2 everything, clean up the production, and send -- you know,  
3 and send out the new disk and be done with it," and the city  
4 did not do that. Instead they sent out a clawback letter  
5 listing a number of the -- of more documents that were  
6 subject to mediation privilege issues for clawback. This  
7 letter, however, still did not capture everything that needed  
8 to be captured. On Friday we notified the city again that  
9 there were documents that were missing, and I got a response  
10 back saying, "Oh, yes, we know. We're doing a thorough  
11 review. We have lots more documents to add," and so on, but  
12 even still, so far as I know, unless something has come in in  
13 the last hour or so on my Blackberry that I haven't yet seen,  
14 that further letter has not yet come out, and this is  
15 obviously disturbing on a number of levels. One is that, you  
16 know, just to introduce a little reality, you know, what the  
17 parties got, your Honor, simply is this, this little, you  
18 know, hard drive. That's all it is. We didn't get cartons  
19 of documents. It would have been the simplest thing in the  
20 world for the city to just say, "Look, everyone, send them  
21 back. Delete what you loaded up on your computers -- and you  
22 couldn't have processed much in the time you've had it -- and  
23 we'll get out a clean version and be done with it." Instead,  
24 the city put a spotlight on all the documents. The parties  
25 have now had them for closing in on, what, six full days to



1 rummage through them and to find these documents if not even  
2 on purpose but by accident, and these are mediation-related  
3 documents that are not just related to my particular clients.  
4 You know, we saw that they were documents relating to issues  
5 of UTGO, COPs, swaps, pensions, retirees, OPEB. Obviously we  
6 don't have to belabor for the Court that, you know, the  
7 confidentiality is the linchpin around whether the mediation  
8 process works. And the issue here, of course, is that for  
9 certain parties such as the bond insurers like my clients  
10 there are issues here that may go beyond this case. This may  
11 not be the last municipal bankruptcy that is heard in  
12 America, and these kind of issues are of grave concern to us.  
13 I don't know what the status is of all the other mediations  
14 that are out there and if they affect them, but there's  
15 certainly a decent potential for a lot of things to be  
16 disturbingly tainted by this. And the city, it seems to me,  
17 has sort of -- I don't know if I would -- they did not take  
18 the simplest and obvious way to nip this thing in the bud,  
19 and instead they essentially have let it fester, and it's  
20 still continuing to fester through this morning. What we  
21 would ask is that the city claw back the entire production,  
22 get those things straightened out, and then reproduce it. A  
23 helpful suggestion was made that the city should, to the  
24 extent that they are reproducing, keep all the Bates numbers  
25 lined up so whatever work product people have done on the

1 existing documents they don't have to lose that way, and  
2 that's fine. You could replace them with blank pages or  
3 something. But we need to get this thing taken care of now  
4 and immediately. This issue may also be affected by issues  
5 which I think we'll get to later in the day about sort of  
6 more general issues with the city's production, so in terms  
7 of the impact this may have on the forward motion of the  
8 case, it may have to be considered in light of what the Court  
9 hears and decides with respect to those issues, so I just  
10 wanted to mention that as part of the process.

11           The last thing I'll mention is this. I mean  
12 obviously clawback is a well-known remedy when things get  
13 produced that shouldn't be produced, but there's something  
14 very important that's different here. If I'm doing my own  
15 document production and I inadvertently let out an attorney-  
16 client privileged document, it's my error, and if clawback is  
17 a less than hundred percent perfect remedy, well, the person  
18 that made the error has to bear the burden of that, but here  
19 the city's error on this thing doesn't -- it may affect the  
20 city, but it also affects many other parties who had no role  
21 in the process of not being diligent enough to make sure this  
22 material didn't get out, and so there's a mismatch, I think,  
23 and that may have something to do with the city's degree of  
24 attention and alacrity in dealing with this issue because the  
25 people who bear the burden of what happens here are not the

1 ones who are really in a position to clean it up or to have  
2 prevented it in the first place. So we would ask that the  
3 city be directed to swoop everything back up, get this  
4 cleaned up once and for all, get it certified, have all the  
5 parties certify in writing that they have destroyed all  
6 copies they have of what was sent out up to date, and we get  
7 this issue taken off the table once and for all.

8 THE COURT: Thank you, sir.

9 MR. IRWIN: Good morning, your Honor. Geoff Irwin  
10 from Jones Day for the city. The city deeply regrets that  
11 these mistakes were made. I hate having to be here and have  
12 this conversation with the Court. I would, however, like to  
13 make the representation that these were not intentional.  
14 They happened in connection with a very large document  
15 production that took place over a very compressed period of  
16 time.

17 THE COURT: How did it happen?

18 MR. IRWIN: It happened with reviewer error. There  
19 are people --

20 THE COURT: What does that mean?

21 MR. IRWIN: We have document reviewers who have  
22 eyeballs on every one of the documents that goes out the  
23 door. We started with a collection -- and I'm sure we'll  
24 have reason to talk about this later this morning as to why  
25 it was so large. We collected almost 1.2 million documents

1 to review in response to this.

2 THE COURT: Were these people instructed to exclude  
3 mediation confidential documents?

4 MR. IRWIN: Absolutely, and the system worked. We  
5 were able to screen and protect against production --

6 THE COURT: It sort of worked.

7 MR. IRWIN: -- of multiples of more documents.

8 THE COURT: It sort of worked.

9 MR. IRWIN: I agree. I'm sorry. Your Honor, I  
10 apologize. It worked when it was executed by the people  
11 who --

12 THE COURT: It worked when it worked.

13 MR. IRWIN: -- we relied upon. It worked when it  
14 worked. Fair enough. We had -- there were obviously  
15 documents that made it through the system, and there were  
16 people who missed --

17 THE COURT: How many?

18 MR. IRWIN: So we now believe -- and the reason --  
19 one of the reasons we haven't, you know, put the order out,  
20 we wanted to see how the Court wanted to deal with it this  
21 morning. We wanted to be sure. We wanted to be right. So  
22 we've been working this issue very hard since Thursday. We  
23 think, based on the information that's available to me, it's  
24 about 120 documents. Now, I recognize that's a --

25 THE COURT: Do you have any objection to the relief

1 that's sought here today?

2 MR. IRWIN: I don't want to slow down the schedule.  
3 The city's concern is that the time it will take to reproduce  
4 the documents, which we can do, and --

5 THE COURT: You haven't done it already?

6 MR. IRWIN: We have not reproduced the entire file.  
7 We needed to know what the documents were. We needed to know  
8 what documents --

9 THE COURT: But you already told me you know those.  
10 It's 120.

11 MR. IRWIN: Yes, as of late last night. I now know  
12 what the universe of documents is.

13 THE COURT: How long does it take to produce a new  
14 hard drive?

15 MR. IRWIN: Probably takes two or three days to do  
16 this I'm told.

17 THE COURT: How many hard drives do you need to send  
18 out?

19 MR. IRWIN: There are two dozen or so parties who  
20 have propounded discovery on the city.

21 THE COURT: It takes two days to produce two dozen  
22 hard drives?

23 MR. IRWIN: To go into the system, yes. I'm told  
24 the electronic vendor that we use, to go into the system and  
25 manually remove the documents that we have now identified as

1 of last night will probably take a day or two, and then we  
2 need to produce the hard drives, so it will just take --  
3 it'll take a couple days.

4 THE COURT: And your concern about that is what?

5 MR. IRWIN: My concern about -- I don't have a  
6 concern about that, and the city is willing to do that. My  
7 concern is --

8 THE COURT: Well, let me just ask again what -- do  
9 you object to the relief that's sought here today?

10 MR. IRWIN: I don't object to reproducing the  
11 documents. What I object to is the notion that everyone who  
12 has the hard drives that were produced last week has to stand  
13 down and destroy those and destroy any searches that they've  
14 run against those materials because I predict people will  
15 then say because we didn't get the new hard drives and  
16 because we had to start over on Wednesday or Thursday or  
17 Friday of this week, they will say the schedule now needs to  
18 change in the following ways that I can't predict, and my  
19 suggestion is simply that we are willing to reproduce the  
20 hard drives, but it shouldn't impact parties' ability to  
21 use -- to run their searches and use the disks that they have  
22 right now and abide by the new clawback letter that I am  
23 perfectly prepared to put out later today now that I know the  
24 universe of documents, but we will do as the Court instructs.

25 THE COURT: If parties have to reproduce work

1 because of a violation of this Court's mediation order,  
2 mediation confidentiality order, shouldn't the city be  
3 responsible for that?

4 MR. IRWIN: Responsible in which way, your Honor?

5 THE COURT: Economically.

6 MR. IRWIN: You mean to pay for the hard drives that  
7 go out?

8 THE COURT: No. If parties have to reproduce work,  
9 redo work as a direct result of the city's violation of the  
10 mediation confidentiality order, shouldn't the city be  
11 responsible for the cost of that?

12 MR. IRWIN: I think that's what I'm trying to say is  
13 that my proposal is and the city's position is they should  
14 not have to redo work. They should be able to rely on the  
15 data and the documents that were released in connection with  
16 the first --

17 THE COURT: Well, but that does nothing to reverse  
18 the violation of the confidentiality that occurred. You're  
19 leaving the confidential documents in the hands of people who  
20 shouldn't have them.

21 MR. IRWIN: Fair, your Honor. I understand that. I  
22 would also -- there are, again, over a hundred documents that  
23 we're talking about. I have had a chance to look through a  
24 number of them. I have not looked through all of them. And  
25 I'm not going to talk about the substance of any documents or

1 things like that, but I can also say that in many of these  
2 cases what has happened is -- or the contents are city  
3 communications, city internal that liken them much more to  
4 what we've heard about an inadvertent production of your own  
5 attorney-client documents. There will be an e-mail that'll  
6 be a request for information, a standard set of information  
7 requests that then gets kicked around among counsel five or  
8 six times saying in a different e-mail how should we respond.  
9 That could be five or six of the 120 documents as to which  
10 there is absolutely no prejudice to anyone except perhaps the  
11 city in terms of deciding what we should do about these  
12 things. To be clear, there are plainly documents in here as  
13 to which I am quite sure the participants to this mediation  
14 believed and hoped and expected under the terms of the order  
15 that would remain confidential, but I don't believe that the  
16 magnitude of the problem is that we have 120 exchanges of  
17 information where there are terms that would put a third  
18 party in a position where it feels like this is information I  
19 fully expected would stay confidential.

20 THE COURT: Anything further?

21 MR. IRWIN: Your Honor, we would only point to the  
22 fact that under Federal Rule 37 an inadvertent mistake is not  
23 sanctionable, and that's what we have here. This is not a  
24 deliberate or intentional violation of the Court's order.

25 THE COURT: Well, perhaps so, but if parties have to



1 do extra work because of your violation of a court order, why  
2 should they bear the burden of that?

3 MR. IRWIN: And, again, your Honor, that's why I'm  
4 suggesting they shouldn't have to do that.

5 THE COURT: All right. Does anyone else want to be  
6 heard regarding this matter?

7 MR. PEREZ: One second, your Honor. Your Honor,  
8 Alfredo Perez on behalf of FGIC. I think part of the problem  
9 arises from the fact that they produced the same documents to  
10 everybody whether they were responsive to your document  
11 request or not. And, for instance --

12 THE COURT: Is this where you ask them not to do  
13 that in round two?

14 MR. PEREZ: Well, you know --

15 THE COURT: Sir --

16 MR. PEREZ: I'm sure that they did it -- I'm sure  
17 that they did that in order to be quick, but I don't know  
18 whether that's -- whether they can do that or not do that  
19 because they certainly haven't identified what documents  
20 relate to what request, but the --

21 THE COURT: All right. I'm going to ask you to hold  
22 on that one until we address it more directly later.

23 MR. PEREZ: Yeah. What I was going to say --

24 THE COURT: We have a very specific problem we're  
25 trying to solve here, and your raising that issue doesn't

1 help us.

2 MR. PEREZ: Your Honor, what I was going to say --  
3 and I got a little sidetracked, but what I was going to say,  
4 we made proposals to them in the context of mediation. Those  
5 were produced to everybody. That's the kind of thing that  
6 I'm concerned about.

7 THE COURT: Right. Sir.

8 MR. IRWIN: May I --

9 THE COURT: One second.

10 MR. IRWIN: Okay.

11 MR. ANGELOV: Good morning, your Honor. Mark  
12 Angelov for Ambac Assurance Corporation. There's a practical  
13 way to limit the impact of this production and the defect in  
14 the production on the work product that the parties have  
15 done, and that's something that's been alluded to before.  
16 People will not necessarily have to redo the searches and  
17 whatever marking and foldering they have done with the  
18 documents that have been produced if the city is careful in  
19 repeating the production in such a way that all the control  
20 numbers and the Bates numbers line up, and so in that event  
21 people wouldn't have to go back to square one. Thank you.

22 MR. IRWIN: Two brief points. That's actually what  
23 I was referring to when I said if people could preserve their  
24 work product. If the city were to reproduce, we would  
25 produce it in such a way that would allow them to --

1           THE COURT: All right. If there's a technological  
2 solution to this, great, but in the meantime I'm going to  
3 order you, sir, and the others who have spoken up here today  
4 and really anyone who has an interest in this to meet and  
5 confer during our breaks today, perhaps over lunch, to see if  
6 you can come to an agreement on how to solve this problem.  
7 In the Court's view, this is a major problem that needs to be  
8 solved today.

9           MR. IRWIN: Understood, your Honor. Thank you.

10          THE COURT: Let's turn our attention to the motion  
11 to compel Wayne, Macomb, and Oakland Counties to produce a  
12 privilege log.

13          MR. MONTGOMERY: Good morning, your Honor. Claude  
14 Montgomery, Dentons, for the Retiree Committee. We are the  
15 movants today. Your Honor, we filed our motion. I believe  
16 Macomb filed an opposition, Oakland filed an opposition, and  
17 Wayne did not, but it had a pending objection to discovery,  
18 which includes the rejection of producing privileged  
19 information. I think we have a practical problem in that  
20 everybody understands the rule. Everybody understands that  
21 there's an obligation to produce a privilege log except when  
22 it would be extraordinarily burdensome, and then they can go  
23 the category route if you follow the advisory committee's  
24 role and the party that is resisting has sought a protective  
25 order. Here we've sort of conflated the matters, and we're

1 kind of in front of you dealing with the same thing.

2           The basic proposition is that a substantial number  
3 of the documents that appear to have been responsive have  
4 been withheld on grounds of privilege. For example, the --  
5 Macomb produced 3,700 documents, approximately, but withheld  
6 2,100 documents or 35 percent of the total documents they had  
7 available were withheld on privilege grounds which they  
8 purported to categorize in five simple sentences basically  
9 saying we either sought communications from counsel or we  
10 didn't or it was work product, and for Macomb no indication  
11 of deliberative privilege being asserted, just attorney-  
12 client privilege and attorney work product.

13           Oakland County produced 2,967 documents but withheld  
14 3,557 documents, meaning of the documents they thought were  
15 responsive to our inquiry, most of them were privileged in  
16 some form or another, and, again, no privilege log as to the  
17 hows and whys, although in their response they put the  
18 general descriptions. They include one deliberative  
19 privilege document and approximately 1,700 common interest  
20 privilege documents.

21           Now, your Honor has been faced before with the  
22 necessity of precision on common interest, and you will  
23 recall last fall the common interest privilege between the  
24 state and the city was the subject of intense scrutiny, and  
25 your Honor required some precision through use of privilege

1 logs and large-scale productions by the state and the city in  
2 that regard. Here the size of the productions are nothing  
3 close to the 250,000 pages that the city has produced this  
4 time. We're talking about under 30,000 documents, which in  
5 normal parlance I think is, you know, like ten Bankers Boxes  
6 used to be the way we thought about it. Now I have no idea  
7 how many megs it is, but I think that given the relatively  
8 large assertion of privilege relative to the responsive  
9 documents, that the producing parties can do more than simply  
10 give us a sentence that we've met the rules, and these are  
11 privileged. Their statements to the Court and statements to  
12 us are essentially trust us, we did it right, and, of course,  
13 the whole purpose of a privilege log is, yes, you probably  
14 did most of it right, maybe even all of it right, but we're  
15 entitled to know and challenge where appropriate. And we  
16 think where there are serious questions as to whether or not  
17 there is common interest, where there's all too likely a  
18 possibility that cc's were regarded as communications for  
19 counsel -- that is, one business person communicating to  
20 another business person, cc'ing a lawyer and asking  
21 everybody, "Do you have any questions?" -- sometimes that's  
22 privileged, sometimes that's not, your Honor, and we think  
23 that a privilege log is the only reasonable way to meet the  
24 requirements of 26(b)(5) in this regard, and so we'd ask you  
25 to order it.

1           THE COURT: What is the litigation or the issue  
2 between these counties and your client, and how is the  
3 documents that you have requested relevant to that issue?

4           MR. MONTGOMERY: Let us -- I think it sort of goes  
5 to the point that Macomb raised, well, haven't you settled,  
6 and why aren't you -- why aren't you simply standing down  
7 here. Well, as your Honor well knows, on the basic  
8 proposition of whether or not we will be favoring  
9 confirmation or not favoring confirmation depends on three  
10 major factors.

11          THE COURT: Right.

12          MR. MONTGOMERY: One, does the state come through  
13 with its promised funds on the terms that it put in the plan,  
14 not a different set of terms, but on the terms that it put in  
15 the plan; two, whether the Classes 10 and 11 as pension or 12  
16 as OPEB actually vote for the plan because if they don't vote  
17 for the plan, then we could be opposing cramdown; and last  
18 but not least, your Honor, the city is proposing to undertake  
19 a transaction or transactions that might be either a regional  
20 authority or privatization authority, and the retirees have a  
21 specific interest in that, not just as retirees of a given  
22 plan -- form of the transaction might say something about  
23 that -- but because there is something called a DWSD CDR in  
24 the plan in which we have a direct economic interest in any  
25 upside gained by the city, so Macomb and Oakland have said

1 they -- in their disclosure statement objections that they  
2 are opponents to the plan process. They are asserting unfair  
3 discrimination between Classes 10, 11, 12 on one side and  
4 whatever class they are in even though they are only  
5 contingent creditors and I think the city at one point said  
6 they were going to be assumed, so they're not going to be  
7 voting as creditors anyway, but assuming they are creditors  
8 and assuming they are opposing the plan on a voting basis,  
9 they have said they're our opponents. They oppose the  
10 treatment that we're proposing. They're also opposing  
11 apparently the city's ability to do the transactions, at  
12 least according to the disclosure statement, and so since we  
13 have an economic interest in those, we need to understand  
14 what it is the counties are trying to do because it may  
15 actually simply be a case of they're trying to transfer value  
16 from retirees to county water and sewer payers. If it's that  
17 simple, we may be fighting.

18 THE COURT: And generally speaking, what are the  
19 documents?

20 MR. MONTGOMERY: The documents that have been  
21 produced are basically --

22 THE COURT: No. Requested.

23 MR. MONTGOMERY: Oh, we've requested information  
24 that relates to the functioning of DWSD from their vantage  
25 point, any challenges they have with respect to the

1     computations of retirement benefits and the cost because that  
2     was one of the challenges and sort of a -- sort of a pretty  
3     standard broad tell us -- give us the documents that are  
4     relevant to the operation of DWSD for a specific time period,  
5     basically from the appointment of the emergency manager  
6     forward basically.

7             THE COURT: Thank you, sir.

8             MR. MONTGOMERY: Thank you.

9             MS. O'GORMAN: Good morning, your Honor. My name is  
10     Debra O'Gorman, and I'm here for Macomb County by and through  
11     its public works commissioner, Anthony Marrocco. Your Honor  
12     hit on a very important point when you asked counsel for the  
13     Retirees' Committee what their interest is in this dispute.  
14     As we know, they have reached a settlement in principle of  
15     their claims. In fact, there was a recent stipulation that  
16     was filed extending deadlines for the Retirees' Committee and  
17     their own discovery obligations, so it really is quite ironic  
18     that they're here requesting municipal parties with limited  
19     resources to undergo the burden and expense of providing a  
20     privilege log. As we all know, the counties will be filing  
21     an objection to the plan. The city will be responding and  
22     dealing with that objection, and the city is capably  
23     represented by numerous counsel who can oversee the discovery  
24     process as against the counties. And the important thing to  
25     keep in mind here, your Honor, is that the city is not



1 requesting a privilege log from any of the counties. In  
2 fact, no other party here with the very limited exception of  
3 Syncora requesting a privilege log on one discrete issue of  
4 the city -- no other party in this courtroom is being asked  
5 to provide a privilege log, and there really is simply no  
6 basis to burden the counties only with this very large and  
7 expensive task.

8 THE COURT: Well, how large and expensive is it?

9 MS. O'GORMAN: Well, it requires us to go through  
10 each and every one of the documents withheld on the basis of  
11 privilege to review each one and identify the basis for the  
12 privilege, prepare a listing. You know, what will also  
13 likely happen is we'll be back before you with questions and  
14 challenges and requests for in camera review of documents  
15 withheld on the basis of privilege, and, you know, that will  
16 take more time and effort on the part of many of us here.  
17 And, you know, this case is moving very quickly. Macomb  
18 worked, you know, very diligently to make a production of  
19 documents. It was a substantial production. It's being  
20 minimized, you know, but our role is really very discrete  
21 here, and it is a large production, you know, even compared  
22 against the city's production. Our set is deduped, so the  
23 number of documents that we produced are discrete individual  
24 documents. They're not duplicates of the same thing. You  
25 know, it really is a large effort, and it --

1           THE COURT: Does your client oppose confirmation of  
2 the debtor's plan?

3           MS. O'GORMAN: I'm sorry. I didn't hear you.

4           THE COURT: Does your client oppose confirmation of  
5 the debtor's plan?

6           MS. O'GORMAN: We do.

7           THE COURT: On the grounds that Mr. Montgomery  
8 indicated?

9           MS. O'GORMAN: Yes. He's generally correct in that  
10 regard, but I also would like to bring to your Honor's  
11 attention --

12          THE COURT: Doesn't that litigation position in  
13 Bankruptcy Court carry with it certain burdens, including  
14 privilege log?

15          MS. O'GORMAN: Yeah, it does. We, you know, are not  
16 looking to shirk our responsibilities. That's not why we're  
17 here, but we, you know, would like to bring to the Court's  
18 attention the fact that, you know, this magnifying glass is  
19 being put on the counties. You know, the suggestion that  
20 because a common interest privilege may exist between the  
21 counties and may be asserted requires a privilege log, you  
22 know, for some special reason really is just not supported by  
23 anything. I don't think that anybody would really contest  
24 that the counties do not have a common interest with regard  
25 to the issues here, the possible creation of the regional

1 authority, the treatment of the DWSD assets. The counties  
2 have and should work together in that regard and have  
3 asserted and will assert, you know, a common interest  
4 privilege. And to what benefit of the Retirees' Committee  
5 would this privilege log be? And as we said before, the  
6 chief opponent of the counties is the city. The city is not  
7 requesting a privilege log of us. What role does the  
8 Retirees' Committee have? They have no special expertise in  
9 the DWSD or discovery related to that --

10 THE COURT: Well, but Mr. Montgomery says they have  
11 a significant and at least in one respect special unique  
12 stake in the outcome of your objections.

13 MS. O'GORMAN: They do, but the types of documents  
14 they've asked for, you know, likely would not go directly to  
15 those issues. I'm just not sure where that connection really  
16 lies.

17 The other thing I would like to ask your Honor if  
18 you are considering requesting a privilege log that it would  
19 be a basis for cost-shifting to the Retirees' Committee. If  
20 they really, you know, insist that this be provided, they  
21 should bear the expense. You know, they are the only --

22 THE COURT: Of course, their costs are paid by the  
23 city.

24 MS. O'GORMAN: Well, and the city is not requesting  
25 a privilege log, so, you know, that is, you know, very good

1 evidence in and of itself that because of the pace at which  
2 this matter is moving, the many things that we all have to do  
3 going forward in the next few weeks, stopping everything to  
4 create a privilege log, to litigate over privilege issues is  
5 just not going to advance the ball forward, you know, given  
6 the roles of both the counties and the Retirees' Committee,  
7 so we ask that the motion be denied.

8 MS. QUADROZZI: Good morning, your Honor. Jaye  
9 Quadrozzi on behalf of Oakland County. Oakland County  
10 concurs in the position just articulated by Macomb, and I  
11 don't want to waste this Court's time with duplicating the  
12 able arguments that were made. I do want to make a couple of  
13 points, quite frankly, to reflect what I'm sure was just a  
14 mix-up in terms of the numbers. The documents -- and let me  
15 back up just one step. The documents requested of the  
16 counties, particularly Oakland County obviously, primarily  
17 are from a time frame, as noted by counsel, moving from the  
18 point of the appointment of the emergency manager forward,  
19 and so the suggestion that, yes, a large number of those  
20 documents are privileged makes perfect sense because  
21 obviously in that, you know, 13 months or so since that  
22 happened, the discussion of the regional authority had not  
23 previously -- with the exception of a very brief period of  
24 time in front of Judge Cox, had not been a subject, so we're  
25 looking at a very compressed period of time. To the extent

1 that they sought records relating to the operation of DWSD,  
2 while we have some of those documents, precious few of those  
3 documents are things that do not already exist at the city  
4 and that anybody has access to, so that is why we had a large  
5 number of documents withheld. In terms of the numbers  
6 withheld, counsel identified that there were 1,700 documents  
7 withdrawn -- or withheld on the basis of the common interest  
8 and one on governmental deliberative process. That's  
9 actually the reverse. We only withheld one document, and I'm  
10 referring to paragraph 11 of our response, on the basis of  
11 the common interest privilege. The remaining 1,700 were the  
12 deliberative process, which, as I say, is really as a result  
13 of the fact that that deliberation was taking place in the  
14 context of the analysis of a regional authority over the past  
15 13 months, and we would ask that Macomb -- that the Retirees'  
16 Committee motion be denied.

17 THE COURT: Thank you.

18 MR. NEWMAN: Your Honor, Max Newman on behalf of  
19 Wayne County. We did actually file a response on Saturday to  
20 this motion, and we are objecting to it. And I concur in the  
21 arguments made by able counsel before me. I just wanted to  
22 give the Court an idea of the magnitude of the task that the  
23 county has gone through. Obviously it's not what the city  
24 went through with over a million documents, but there were  
25 substantial documents that were reviewed. After a couple of

1 days of investigation to figure out, you know, where these  
2 documents were located, we employed the Stout Risius Ross  
3 firm to create a database of the needed documents. Then we  
4 employed reviewers from the Kelly Services firm in order to  
5 get what we originally had as a two-week time frame -- the  
6 Court later extended that by an additional ten days, but, you  
7 know, at the beginning there was a real fire drill because we  
8 really had to get this done quickly. To give the Court the  
9 magnitude of the difference between inspecting the documents  
10 for privilege and actually doing a privilege log, when the  
11 discussion came up among the counties and the decision was  
12 made to respond without a privilege log, we went from having  
13 five attorneys at 20 hours each to one attorney at about 40  
14 hours to inspect the documents for privilege, so we're  
15 talking about 60, 70 hours' worth of attorneys' time in  
16 addition to create a privilege log, which is a substantial  
17 burden to Wayne County, and we do believe that, as news media  
18 reports have indicated, Wayne County is not exactly flush  
19 with cash at the moment either, and the cost-shifting  
20 argument is certainly something that we're interested in  
21 here, you know. Despite it being shifted to the city, on the  
22 other hand, given our role in the proceedings, it's not fair  
23 to burden us with this when no one else is being burdened  
24 with this specific requirement. And, therefore, for the  
25 reasons I just stated and the reasons stated by counsel

1 before me, we would oppose the motion.

2 MR. MONTGOMERY: Your Honor, I just wanted to bring  
3 your attention back to a discussion you had with -- I believe  
4 it was Mr. Gordon last fall regarding Reed versus Baxter, the  
5 Sixth Circuit decision on common interest privilege in which  
6 the Sixth Circuit makes it clear that just because a lawyer  
7 is in the room for one side when other people are talking  
8 about something doesn't mean that a common interest privilege  
9 exists with respect to nondisclosure, and that very issue  
10 about whether or not a lawyer for one side can be in the room  
11 while business people for both sides are there is an  
12 important one and gets flagged through the use of privilege  
13 logs. And, your Honor, that is probably further highlighted  
14 here in which Macomb in its response doesn't indicate there  
15 are any common interest privilege withheld documents, but  
16 Oakland says there -- apparently I got it reversed -- there  
17 are 1,700 documents that have a common interest privilege,  
18 and --

19 THE COURT: Hold on one second. Ma'am --

20 MS. QUADROZZI: One. One document we filed on  
21 common interest.

22 MR. MONTGOMERY: One common, but there are 1,700  
23 deliberative interest. Sorry. She's correct. And so  
24 there -- something has transpired here in the way they are  
25 approaching the issue of privilege, and I think it warrants

1 when a party decides they want to jump into a big fight and  
2 they want to take on and challenge recoveries proposed by the  
3 city and method of delivering -- means of implementation of a  
4 plan that specifically affects one group of people in a  
5 unique way and they assert that a large number of documents  
6 are privileged, they should be put to the burden of  
7 establishing that privilege in some reasonable fashion, and  
8 the simple categorization that they used in their responses  
9 should be regarded as insufficient. Thank you.

10 THE COURT: All right. I'm going to take this under  
11 advisement and give you a decision from the bench here when  
12 we reconvene after lunch. I want to proceed with our next  
13 matter, but give me a moment before we do that. Chris, may I  
14 see you? Okay. Let's turn our attention then to the three  
15 Syncora motions, please, and I'll let you choose which of the  
16 three you'd like to start with.

17 MR. HACKNEY: Thank you, your Honor. Your Honor,  
18 good morning. Stephen Hackney on behalf of Syncora. Your  
19 Honor, when we got your order for today's hearing, I think  
20 that we understood you to envision a hearing where the Court  
21 would hopefully sift discrete objections that had been made  
22 to producing certain types of documents and we could go back  
23 and forth about whether the objection was well-taken, and  
24 whoever won or lost, you could say go produce discrete  
25 category "X" of documents. Consistent with that, you asked



1 us to prepare something that went response by response,  
2 objection by objection, and I will tell you that we have done  
3 that and are prepared to do that later today. It is a 152-  
4 page beast, and I wanted to explain to you why it looks like  
5 this and also give you some thoughts about why this may not  
6 be the most efficient way to proceed today or use your time  
7 or our time, and --

8 THE COURT: I'd be interested in that.

9 MR. HACKNEY: I thought you might. Everyone loves a  
10 152-page spreadsheet. So let me tell you, your Honor, that  
11 that's why we filed the motion to compel. The motion to  
12 compel is designed to put up in lights for you important meta  
13 issues that relate to the methodology by which they collected  
14 documents, and at the end of this presentation I have  
15 suggestions for the Court for its consideration about how we  
16 might proceed, but I want to say that we stand ready to go  
17 one by one.

18 Your Honor, in our view, the ability to conduct  
19 today's hearing has been substantially frustrated by the way  
20 that the city has gone about producing the documents. The  
21 city's document responses identify a large number of  
22 objections, what are called general objections, and then they  
23 incorporate all of the general objections into all of their  
24 responses to their document requests, so what that means,  
25 your Honor, is that if you pick up document request of ours

1 number one, which I believe relates to, you know, identify  
2 the works of art that are in the DIA, they will say subject  
3 to the general objections, we'd be happy to produce documents  
4 that relate to that subject. The problem is that by  
5 incorporating all of the general objections into the  
6 response, the proponent, me, is left uncertain as to what  
7 documents it is that they are producing and what it is that  
8 they are not producing. This is important, your Honor,  
9 because there are objections that are demonstrably  
10 problematic. For example, the city has said we will not  
11 produce documents that go back before January 1, 2013, so I  
12 don't need to go through the entire production, and I will  
13 tell you that I haven't yet, and I will tell you why we  
14 haven't yet. This is the unique case where I'm moving to  
15 compel related to a document production that I haven't  
16 reviewed, and I acknowledge that's somewhat unusual, but it's  
17 the press of the schedule as well as the fact that the  
18 responses themselves tell us that we have a methodological  
19 issue with respect to the documents the way they were  
20 collected. That's why we're driving the issue to you today,  
21 so I wanted to get that up front.

22           The city has also made an important objection that  
23 was concerning to me where the city said we'll only search  
24 for and locate documents that we can reasonably get to under  
25 the schedule, and you know that's something that's of concern

1 to me because we were of the view that we needed more time in  
2 order to do this the right way, and we expressed that. The  
3 city took a different view. The city said, "No, we can go  
4 fast, and we would like the more expedited schedule," which  
5 is fine, but you can't bootstrap your way then into  
6 withholding relevant evidence, I don't think, because you  
7 say, "Well, I'm not able to get to it under the schedule that  
8 I advocated for." These are just two examples of general  
9 objections that to just the plain read give concern to me  
10 because to tie it up and make it practical, your Honor, if  
11 you take a document request and the city says, "Well, I'm  
12 producing documents to you, but it's subject to my objection  
13 that I'm only going to produce documents that I can  
14 reasonably get to within the few weeks that we've had your  
15 request," then you're left not knowing what they did and  
16 didn't do, and that is inefficient, your Honor, because what  
17 will happen is we have issued a 30(b)(6) deposition request  
18 of the city, so at some point down the road we will take a  
19 deposition on the method by which they collected and produced  
20 documents. And if you learn then that there were important  
21 document categories that were not produced, then we've lost  
22 more time. Again, that's why we're driving the issue to you  
23 today and we have these specific suggestions.

24           Compounding matters, the production is 250,000  
25 pages, and the size of the production I would say doesn't

1 worry me particularly, but the fact that it's not indexed in  
2 any way has been a substantial difficulty for us on the other  
3 side trying to understand what's in it and what's not. You  
4 don't want to get to the point where with respect to any of  
5 your requests you have to go through the entire production  
6 and have a sense of what you think should have been in there  
7 and wasn't.

8           So what we did is we had a meet and confer with the  
9 city in this past week where we said, look, you know, we're  
10 not really even at the stage where we can say, "Why aren't  
11 you producing Bucket X, why aren't you producing Bucket Y?"  
12 We're at the "What did you guys do here?" stage. And, you  
13 know, the city has obviously been operating under a very  
14 expedited schedule, and, you know, I don't envy Mr. Irwin's  
15 position, but the answer was, "Well, we had a large team of  
16 people, and no one person can really tell you what it is that  
17 we've done, so ask those questions, and I'll come back to  
18 you." We said to the city, "Look, we think it would be a  
19 good idea if you identified the custodians who you searched,  
20 the search terms that you used for electronically stored  
21 information. You know, paint a picture for us. Tell us what  
22 you did here so that we can sit back and look at the picture  
23 you painted and say what about this, what about that, what  
24 about this," and the city has not yet been willing to agree  
25 to do that, and I think that's something that will be

1 included in my suggestions to the Court.

2           The clawback issue has also had an impact on us. We  
3 got these documents Wednesday morning, and we shipped them  
4 out to a vendor to be uploaded by the vendor. You have to  
5 like process the documents before you can review them. If  
6 you like want to be bored to tears and have your eyeballs  
7 melt out of your head, I'll explain to you how all that  
8 works, but I'm going to assume that you don't. What we  
9 did -- so we got caught up in the clawback issue a little bit  
10 ourselves both because apparently there are Syncora proposals  
11 that are in the production but also because we did not want  
12 our teams to start coding the production until we knew that  
13 it wasn't going to change because then if you do a bunch of  
14 coding over the weekend and we do the reboot, then you have  
15 to go back and do it over, so we waited and came today with  
16 the hope that we would get that threshed out.

17           So the purpose of today's hearing is to resolve the  
18 specific objections to the specific requests, but I'm here to  
19 tell you that I don't think we're in a position to do that  
20 because we don't know what we don't know, and we're not able  
21 to speak meaningfully about this production. And I want to  
22 talk a little bit about the impact on that and then offer the  
23 Court our views, but the impact of this is critical. This is  
24 having a crippling impact on two things. First, it's having  
25 a crippling impact on our experts because our experts need to

1 get, for example, forecast-related information. The data and  
2 assumptions behind the forecast is critical. And remember  
3 the way this works because when you're the city, your experts  
4 have open and unfettered access to city employees, to the  
5 treasury department at the state. They literally call them  
6 up on the phone and get information that way. Creditors'  
7 experts have to go through the more cumbersome process of  
8 requesting the discovery, and Ms. Kopacz -- I'm envious of  
9 her because she's going to be somewhat more like a city  
10 witness in that they're going to kind of let her in, and  
11 their folks at E&Y will do working sessions with her and  
12 teach her things, and that's great for her, but I wanted to  
13 make clear that we don't have that, and so that's an  
14 important -- that's what makes the document discovery -- the  
15 written discovery so important, which is it's a bottleneck  
16 for our experts, and remember that our experts are 43 days  
17 away from rendering opinions on things as complicated as are  
18 these ten- and forty-year forecasts solid, so fact-intensive  
19 issues where we're waiting, waiting, waiting. So it's very  
20 important on that front, and it's also important to  
21 depositions because not only do we have to make sure that we  
22 got all the documents and then we have to review them and  
23 synthesize them so that we can use them meaningfully in the  
24 depositions, but that is like a gating issue to being able to  
25 prepare for the depositions. And remember on that front that

1 we are now five days into a deposition period that I believe  
2 ends on or about June 24th, so that's why, again, the pace of  
3 all this is very much on my mind. It's why I'm driving  
4 issues to you with respect to a document production that I  
5 haven't yet reviewed.

6           So I have suggestions for the Court to consider, and  
7 I will offer them now. The first thing I would suggest, your  
8 Honor, is I would order the city to produce a certification,  
9 an affidavit from someone who will describe what the city  
10 did. It will describe the repositories of documents that  
11 were searched to the extent they're not in the hands of a  
12 custodian. It will describe the custodians of the documents  
13 that were searched. And with respect to ESI or  
14 electronically stored information, it will describe the  
15 search terms that the city employed to produce documents.  
16 And I think to the extent the city just knows of certain  
17 document repositories that it didn't search, it could also  
18 identify -- put up in lights for us now we did not search  
19 this, we didn't search that, we're not producing this. So  
20 let's be concrete about what's been done and what's been not  
21 done so that we can speak more meaningfully before you about  
22 what should be done.

23           Second, I would ask the Court to rule on the  
24 clawback issue just so people know what we're doing  
25 technologically with the hard drives that were produced.

1           Third, we would recommend that the city be ordered  
2 to produce an index of the documents. It doesn't have to be  
3 a document-by-document index, although if they have that  
4 technological capability, that would be good, but at least a  
5 subject matter index of what is in the production so that we  
6 can understand it. That could be part of the certification  
7 they're doing.

8           THE COURT: Let me ask you to pause for just one  
9 second, please.

10          MR. HACKNEY: Sure.

11          THE COURT: Go ahead, sir.

12          MR. HACKNEY: So then what I would do, your Honor,  
13 is I would reschedule this hearing with respect to the city's  
14 responses to the creditors' document requests until after the  
15 city has done these things, and what we would do is we'll all  
16 move in parallel, which is the creditors will leave here  
17 today and begin to crawl all over the production. The city  
18 will leave here today and build for us a practical  
19 description attested to by someone under oath that here's  
20 what we did, here's what we didn't do. That will facilitate  
21 meet and confers between us and the city. That will avoid  
22 things like this. Okay. So I'm very -- you know, and then  
23 the way I would propose, your Honor, what I would do with the  
24 rest of the hearing is from where I sit, I think you can  
25 meaningfully address the city's interrogatory responses, so I



1 would propose that we use today to do that. I think that you  
2 can meaningfully address whether we creditors have adequately  
3 responded to the city's discovery, and there are things like  
4 our motion to clarify the witness description, so I believe  
5 that there's still a lot of wood that we could chop today,  
6 and I'm of the view that we should chop it, but I will tell  
7 you that with respect to document production, you have to --  
8 you have to be very practical as lawyers with each other in  
9 order to facilitate getting to the point where you can have  
10 disputes, and this can be done one of two ways. The sort of  
11 textbook way is where you can pick up the responses to the  
12 document requests and the document requests -- the responses  
13 themselves teach you, yeah, they assert the general  
14 objections. Everyone does that, of course. You want to  
15 preserve your objections. But then what they do is either in  
16 each individual response or what we did was we did like a  
17 preliminary statement where we explained to the city what we  
18 were going affirmatively to do. You want to be able to pick  
19 up the responses and say I understand at a general level what  
20 they did.

21           The other -- the second way that I would say is  
22 probably more common is that there's kind of an initial -- I  
23 call it like the armadas meeting out in the sea, which is  
24 there are all these requests that go over here, and there are  
25 all these responses that come over here, and if you picked

1    them up and looked at them, you can't really tell what people  
2    did. The meat of what gets that process going is after that  
3    where people have practical conversations, "Look, what are  
4    you really looking for? I know you have 60 requests, but can  
5    you give me subject matters that you're most focused in?"  
6    And then when you make the production, you go to the  
7    proponent of the production. You say, "Look, tell us what  
8    you did. Tell us what you didn't do." If I regard you with  
9    suspicion the whole time and I'm, you know, kind of cagey and  
10   unwilling to do that, we end up here, okay, which is I don't  
11   know what they haven't produced and why they haven't produced  
12   it, and I can't tell from their document request, but I know  
13   that there are problems with the objections they're  
14   asserting. So that was how we had envisioned the motion to  
15   compel. The motion to compel on the document request has  
16   certain specific areas in it that it calls out. It talks  
17   about -- the forecast is for me paramount. It's one of the  
18   most important issues in the case. I know that Ms. Kopacz is  
19   probably nodding her head because we've got to get this stuff  
20   out. And as an example on that one, the city said, "Well" --  
21   in some respects the city refused to give us historical  
22   revenue information, which made no sense to me, but in other  
23   instances what it said is, "Well, this is going to be handled  
24   as part of expert discovery." And you got to remember the  
25   forecasts are already in the plan, so this isn't -- you know,

1   there's no reason to wait for expert reports to get whoever  
2   the expert is the forecast that he's doing and his reliance  
3   materials and so on at that point. And by the way, we can't  
4   because our experts can't wait until that time to begin  
5   responding to that, so we need to treat the forecasts as they  
6   are what they are, which is they're a part of the plan.  
7   There's data and assumptions that went into them. Triage  
8   those to the front, like get those produced today. There  
9   must be a file somewhere. We're talking about forecasts that  
10   have been in existence subject to refinement for almost a  
11   year, so there's got to be an E&Y file that says here's  
12   everything that goes into the forecast. Put it on a disk and  
13   give it to us. Stage that forward. We have other aspects of  
14   the motion to compel that talk about the way boilerplate  
15   objections are typically handled and that they're often  
16   overruled by courts who say, "Look, it's not concrete enough  
17   in terms of informing your adversary what you have or have  
18   not done."

19           And then we do have an issue at the end of the  
20   motion to compel with respect to privilege logs, and I  
21   understand the city's position in part because I'm taking the  
22   same position with respect to privilege logs. In cases like  
23   these where there is so much privileged communication, such a  
24   low likely yield of a review of those documents, it is often  
25   more efficient to not do a log, and I acknowledge that. It's

1 a little bit scary because it means that that will just never  
2 be subject to process, but it is what it is. What we have  
3 said is, okay, why don't we reserve on the issue of privilege  
4 logs and treat it in a pragmatic way as we go along, but one  
5 issue we know we should talk about now is the issue of the  
6 art in two respects. One of them is what are the privileged  
7 communications that went into Mr. Orr's seeming decision, you  
8 know, to proceed with the grand bargain rather than doing  
9 alternatives, and, second, to what extent is the mediation  
10 privilege being invoked to apply to communications with the  
11 charitable foundations? This plays into a couple important  
12 issues. One of the important issues is one that you and I  
13 had a colloquy on about a few weeks ago about how is the  
14 grand bargain going to be proved up at trial. And I suspect  
15 that -- well, I guess I have suspicions about how they're  
16 going to do it that make it relevant to understand what  
17 communications with different parties went into the way that  
18 deal came together. I think it's going to drive an important  
19 issue to the Court about the scope of the mediation privilege  
20 and how it will interact with the city's attempt at trial to  
21 say this was very -- this was negotiated hard or this was all  
22 that could be gotten in this negotiation. We did the best  
23 that we could. So there's a potential collision course with  
24 issues of mediation privilege and attorney-client privilege  
25 with respect to what I'll call some of the settlement-like

1 issues, and you heard Ms. Kopacz talk about it today with  
2 respect to the union negotiations where I'm sure the city's  
3 initial position was the economics that relate to the union  
4 negotiations and the perceived benefits of the CBA revisions  
5 and so forth, those are within the scope of the mediation  
6 privilege, so that's an important issue that is out there  
7 that I think relates to why we're saying today at least do a  
8 privilege log on the art.

9 We also have a motion to compel on interrogatories,  
10 your Honor, but I had not meant to step our interrogatory  
11 responses up to the front of the queue. It was more in the  
12 way of identifying global issues with respect to  
13 interrogatories. I'm happy to fall into line and argue my  
14 interrogatory points rog by rog. That's part of -- it's a  
15 smaller part of this large spreadsheet that we've prepared.  
16 But that was all I had to say on the motion to compel on the  
17 document front. Thank you, your Honor.

18 MR. IRWIN: Your Honor, in terms of what the city  
19 did and what the circumstances were in connection with its  
20 document production, the schedule is what the schedule is.  
21 The city was in receipt of document requests from more than  
22 two dozen parties. There were approximately 900 total  
23 document requests. There were almost 250 interrogatories,  
24 and they were all on a production or compliance schedule,  
25 which we understood to mean document production and not just

1 the submission of written responses and objections  
2 approximately -- well, exactly two weeks after they were  
3 delivered to us. Of the 1,150 or so discovery requests that  
4 we were responding to, 800 of them came in on the last day  
5 that they were due. It literally took through the weekend  
6 with people working nonstop simply to organize the discovery  
7 requests into massive spreadsheets that we could, in fact,  
8 attack as aggressively as we could. Now, we didn't wait for  
9 these discovery requests to come in. We knew what they were  
10 doing. We had our team and our machinery in place. We were  
11 ready to go, and we, in fact, attacked them very  
12 aggressively. And as I previewed for the Court earlier, the  
13 process in its totality included reviewing 1.2 million  
14 documents, which we applied -- to which we applied search  
15 terms and a date restriction because you have to have a date  
16 restriction when you're reviewing electronic information, and  
17 that's the way people do business these days. That's how  
18 they work with information. That's how they share  
19 information. That's how they communicate. It was a very  
20 robust fully federal rules compliant ESI document search that  
21 the city did that it applied to almost 90 custodians at the  
22 city and its various advisors. After that process, when we  
23 had, again, 300,000 documents to review, many of which, in  
24 fairness, after they were reviewed, were not responsive  
25 because if you think of the funneling that has to take place

1 here to apply -- some of the search terms we used returned  
2 numbers of documents that were not responsive and not related  
3 to the issues in this case. That number was further reduced  
4 to a production number of about 30,000 documents. It was  
5 about 250,000 pages. It would be impossible for the city or  
6 it would take an extraordinarily long time to go back or to  
7 even have done at the time it was being done since the  
8 production deadline at that point was two weeks -- it was  
9 later expanded to three weeks. When you get toward the end  
10 of the two-week period, using the kind of technology that we  
11 use to produce documents, it's not just pushing a button, you  
12 know. On the Monday or Tuesday of the week that it's due,  
13 you got to be locking things down and have your production  
14 more or less ready.

15           The other thing to sort of bear in mind,  
16 particularly as we're responding to interrogatories, is that  
17 the fourth amended plan went in on -- I believe it was the  
18 5th. The document production was -- and the interrogatories  
19 were eventually due on the 6th, Tuesday, the 6th, of last  
20 week. The plan went in on Monday, and the monumental task of  
21 responding accurately and fairly to 240 interrogatories,  
22 which are very complex -- these are not just identify your  
23 witnesses. These involve complex narratives for someone to  
24 sit down and write or pay attention to, often require the  
25 input of lots of people, advisors, people at the city, Jones

1 Day lawyers. Lots of people have to weigh in on these, on  
2 any individual request. Many of the people whose input was  
3 required were working on the plan or are in mediation, so  
4 people are very, very busy. It's a very short period of  
5 time. We produced documents, again, as --

6 THE COURT: So you agree with Mr. Hackney that I  
7 didn't allow enough time for discovery?

8 MR. IRWIN: No. We produced -- we met the schedule,  
9 and we produced documents. I'm saying when Mr. Hackney or  
10 other people complain that we haven't cross-referenced every  
11 document or created an index cross-referencing every document  
12 that we've produced against 900 requests, it's simply not  
13 reasonable under these circumstances, and I don't think the  
14 federal rules require it when you're producing -- making an  
15 e-mail production, which is what we have largely done. Now,  
16 we had that, and we also had -- there are certainly requests  
17 or categories of requests that don't lend themselves to an  
18 ESI search; right? If somebody asks us for, you know, the  
19 last several years of CAFRs, I'm not going to rely on my  
20 custodial search and sweep of e-mail records to do that, and  
21 so we had dozens and dozens and dozens of separate  
22 adventures chasing down information as it responded to  
23 specific requests, but I think for purposes of today's  
24 hearing, my point is simply this. If we're here to address  
25 general objections or specific objections -- if we're here to



1 resolve the city's written responses, the posture that the  
2 city has technically taken with regard to the responses,  
3 where I think everyone is is we've said subject to our  
4 general objections, which are not controversial things --  
5 well, people could dispute the date, but we have to pick an  
6 end date or a start date somewhere, so subject to a date  
7 restriction, subject to the fact that we're not going to give  
8 mediation-related materials, subject to the fact that we're  
9 not going to waive privilege, subject to the fact that we, in  
10 fact, are not going to produce expert materials to you in  
11 advance of what's required by the schedule, we will  
12 produce -- that's what our responses say -- subject to a few  
13 general objections, we're going to give you this information.  
14 So I understand when Mr. Hackney says he doesn't know exactly  
15 what was produced, and it is a large production, and it will  
16 take time to get through, but another path here and the  
17 recourse that's available to any party is to say, well, city,  
18 you acknowledged in your responses that you were going to  
19 produce responsive materials. Setting aside privilege, you  
20 were going to respond and produce materials in this request.  
21 We have indicated that we have made an appropriate search,  
22 and the robustness of our production corroborates that, I  
23 would hope, to some degree. If someone comes to us later and  
24 says, "I don't see the responsive materials in here. You  
25 said you were going to give it to me, but it's not here.

1 Show me where it is," the city will, of course, cooperate and  
2 try to make that effort to identify places in the production  
3 where the documents exist, but that --

4 THE COURT: Is there a list of art in the DIA in  
5 what you produced?

6 MR. IRWIN: So the DIA is a separate issue, and  
7 that's a -- I know it's a part of the motion, and this is a  
8 little --

9 THE COURT: Is that a "no"?

10 MR. IRWIN: -- frustrating for the city as well.

11 THE COURT: Is that a "no"?

12 MR. IRWIN: The DIA has produced it.

13 THE COURT: So the city didn't produce it?

14 MR. IRWIN: The city produced responsive records  
15 that the city has. If there were requests that said produce  
16 inventories of art --

17 THE COURT: Mr. Irwin --

18 MR. IRWIN: Yes.

19 THE COURT: -- for the third time, did or did not  
20 the city produce a list of the art in the DIA?

21 MR. IRWIN: No. The city is not in possession of  
22 that.

23 THE COURT: Did you say you're not in possession of  
24 it?

25 MR. IRWIN: I believe we said we will produce -- we

1 will search for and produce responsive documents.

2 THE COURT: Did you say you're not in possession of  
3 it?

4 MR. IRWIN: I don't believe in respect to that  
5 specific request, no, your Honor.

6 THE COURT: Wouldn't that have been a really easy  
7 response?

8 MR. IRWIN: The written responses to these 900 --

9 THE COURT: Because when you get a request for  
10 production of documents that you're not in possession of, do  
11 you have to say anything more than "we don't have it" ever?

12 MR. IRWIN: The DIA -- the list of documents -- the  
13 list of the art inventory was the subject of specific  
14 negotiations between the objectors and the DIA, and there is  
15 a written agreement pursuant to which the DIA is providing  
16 this.

17 THE COURT: Forget all that. You got a request for  
18 a list of the art in the DIA, and instead of saying, "We  
19 don't have it," you did --

20 MR. IRWIN: I believe --

21 THE COURT: -- something else much more contorted.

22 MR. IRWIN: Well, I don't -- well, I think in this  
23 example, your Honor, where there was an -- and I don't have  
24 perfect command of these 1,150 discovery requests. I believe  
25 for the DIA-related requests, there was an interrogatory that

1 says -- setting the documents aside, an interrogatory that  
2 says identify the inventory at DIA. Give us the major works.  
3 Give us the -- you know, all 60,000 pieces that exist at DIA.  
4 And in connection with that -- and that's a separate  
5 complaint, but I'll wrap it into this conversation. In  
6 connection with that exercise, we, in fact, said, "Go see the  
7 DIA. You've negotiated with the DIA. See the DIA documents  
8 because they've agreed to provide it to you. It's exactly  
9 what you asked for from them." And now, you know, the  
10 complaint is, "Well, you've referred to the DIA documents  
11 generally, but you haven't referred to them specifically." I  
12 don't even have the DIA documents, so I can't refer to a  
13 specific DIA document, but I can read the letter agreement  
14 between creditors and the DIA where they say give us a list  
15 of inventory or a list of art. Here are the terms of it, and  
16 here's what DIA --

17 THE COURT: But you don't have to do that. In fact,  
18 that's a nonresponsive response. If you don't have what  
19 they've requested, just say, "I don't have it."

20 MR. IRWIN: We absolutely -- your Honor, you're  
21 absolutely right. Under the circumstances, we did not have  
22 the -- we did not -- we're not able to go back in terms of  
23 the 900 requests, and where there was a direct request for a  
24 direct document and a specific example like that and we knew  
25 that we didn't have that exact document, I'm sure there are

1 examples where we weren't able to do that. We ran our  
2 searches. We produced the documents that the city had, and  
3 we indicated that we were, as a consequence, complying with  
4 the request, but we couldn't be that specific. Just the  
5 sheer number of the requests didn't permit it.

6 THE COURT: Why no index of the documents that you  
7 did produce?

8 MR. IRWIN: Well, they would be -- so many of them  
9 would be e-mails. I'm not quite sure how to index a  
10 collection of e-mails because the e-mails were generated  
11 because they were created by a search that included search  
12 terms, so I'm not quite sure how we would go about doing  
13 that. I've never been in receipt of an index of e-mails in  
14 connection with a document production that has been made by  
15 an adversary in any case that I've been a part of --

16 THE COURT: Well, have you ever --

17 MR. IRWIN: -- because you'd have to --

18 THE COURT: Have you ever been in a case where in  
19 response to two dozen document requests, you threw 250,000  
20 pages of documents at everybody?

21 MR. IRWIN: In response to two dozen, no.

22 THE COURT: Isn't that what you told me there were,  
23 two dozen document requests, or --

24 MR. IRWIN: No, two dozen parties. There were  
25 nine --

1 THE COURT: Two dozen. That's what I meant.  
2 Document requests from two dozen parties.

3 MR. IRWIN: I have never been in a case where I have  
4 had so many requests. Is that --

5 THE COURT: Yeah. And so instead of responding  
6 party by party by party, you threw all the same documents at  
7 everyone and said, "The documents that you want are somewhere  
8 in here."

9 MR. IRWIN: Yes, your Honor.

10 THE COURT: So I ask again why no index so that  
11 people can figure out whether you responded to their document  
12 requests appropriately or not without having to make them  
13 fish through all of those pages?

14 MR. IRWIN: I just -- I don't think that's possible  
15 in the circumstances, your Honor, to index all of the -- to  
16 cross-reference all of the -- all of the documents because  
17 they would apply to more than one. Someone would have to  
18 manually sit down with the 900 requests, go document by  
19 document and --

20 THE COURT: Well, no. The index that I would be  
21 referring to is just a list of the documents.

22 MR. IRWIN: A list of the title of the documents  
23 because so many of them --

24 THE COURT: Some way to identify them.

25 MR. IRWIN: I wonder if the metadata that's provided

1 with an e-mail production like this doesn't allow people to,  
2 you know, generate lists like that of the documents that  
3 we've produced. The city will do what the Court requests in  
4 this regard, but it would be a -- there are -- the devil is  
5 in the details.

6 THE COURT: How did you choose the date?

7 MR. IRWIN: The date was a date that was chosen  
8 because it was a clean date that was six --

9 THE COURT: Any date is a clean date.

10 MR. IRWIN: Well --

11 THE COURT: Why did you choose the date you chose?

12 MR. IRWIN: It wasn't a random day in February;  
13 right? It was January 1st, 2013. It was six months before  
14 the --

15 THE COURT: January 1st is as random as any other  
16 date.

17 MR. IRWIN: It was six months before the bankruptcy  
18 petition and several months before Mr. Orr was appointed, and  
19 we felt like that would capture the analysis and the events  
20 that are the most relevant in this proceeding. Going back  
21 further in time just increases those numbers that we're  
22 talking about that we felt were --

23 THE COURT: Mr. Hackney wants a list of your search  
24 terms and a list of the repositories.

25 MR. IRWIN: The repositories. Do you mean the

1     custodians?

2             THE COURT:   Custodians.

3             MR. IRWIN:   The custodians.  The custodians are in  
4     the metadata.  The identity of the custodians -- every  
5     document the way it's produced, at least in our system, is --  
6     comes with metadata, and there is source code in the metadata  
7     that identifies the custodian to whom each document is  
8     sourced.

9             THE COURT:   He also wants a list of the custodians  
10    you didn't access.

11            MR. IRWIN:   The custodians we didn't access.  That  
12    could be, I suppose, everyone that we didn't --

13            THE COURT:   Well, city custodians.

14            MR. IRWIN:   You mean a list of everyone at the city  
15    who we didn't ask to -- well, I mean give him the directory,  
16    I suppose.  We identified the custodians who we thought would  
17    have the most relevant information, and we searched those  
18    individuals.  I think that's going to be self-evident from  
19    the metadata, but that's something that we can provide, your  
20    Honor.  And everyone who's on our witness list and everyone  
21    who's associated with an advisor group or someone who's at  
22    the city is --

23            THE COURT:   Okay.  So why not disclose documents  
24    just because they're in the hands of your experts?

25            MR. IRWIN:   That is not what we're saying, your



1 Honor. We're saying that we're not going to produce -- we're  
2 not going to -- we're not going to pre-produce expert  
3 reports.

4 THE COURT: He didn't ask for that.

5 MR. IRWIN: Well, and that's -- I'm glad because I  
6 wanted to sort of make this point because this has come up in  
7 the nonstop meet and confers that I've been having over the  
8 last five days in connection with all of this, and Mr.  
9 Hackney references this in his submission, so I know he's  
10 quite aware of that, and I think he made the Court aware of  
11 it. But in connection with the projections, the -- and the  
12 plan is -- it's a core part of the plan; right? The ten-year  
13 projections, the forty-year projections, all of the work that  
14 Ernst & Young has done, all of the assumptions that went into  
15 it, all the forecasting, the city data that, you know, these  
16 projections rest upon, it's the city's view that it could  
17 take the position that this is all expert analysis and that  
18 we will wait for the point in time under the Court's  
19 scheduling order that we will release this in connection with  
20 the appropriate expert report. We have committed to do that  
21 now. We could stand on that. We're not standing on that.  
22 The problem is all of these people were working furiously on  
23 plan-related issues and mediation-related issues up until  
24 Monday, May 5th, when the fourth amended plan went in. It is  
25 our understanding that Ernst & Young is dedicating the

1 appropriate amount of resources to put together what they are  
2 referring to as the binder, and the binder is going to be  
3 literally spreadsheet based on spreadsheet based on  
4 spreadsheet all in one place so that Mr. Hackney and the  
5 people who are interested in it can have it in one place.  
6 And we'll do it the right way, and we'll --

7 THE COURT: Okay. So when will that be?

8 MR. IRWIN: It's going to take a couple of weeks to  
9 do based on the work they started after --

10 THE COURT: A couple weeks from May 5th or a couple  
11 weeks from now?

12 MR. IRWIN: May 5th, a couple weeks from May 5th.

13 THE COURT: Oh, so another week.

14 MR. IRWIN: Yeah. We'd have to check. I'd have to  
15 check, but my understanding is that's right, and so we've  
16 committed to do that. We're going to -- we're going to  
17 provide that, and I think that -- you know, that answers --  
18 no. I'm not going to characterize the objections, but that  
19 is a -- one of the principal objections baked into not only  
20 Syncora's motion but a lot of the conversations I've been  
21 having with people as well. And, you know, I've been talking  
22 with folks about this as well. In a related vein, the city  
23 could stand on the actuarial analysis that is behind the  
24 settlements, the OPEB settlements, the pension claims, that  
25 is being done by the city's actuaries. It's not simple math.

1 It is clearly the subject of expert opinion and testimony,  
2 but there are existing documents right now in the form of  
3 letters typically where the conclusions are spelled out, and  
4 we are prepared to give that. Now, we're not going to stand  
5 on the -- we're not going to take the position that we could  
6 take, which is you'll get this when, you know, we disclose  
7 our expert reports and we tell you who authored the letters  
8 and who's going to be speaking about those. We're going to  
9 provide those now. So the city is willing to do these  
10 things. We've tried to take a view in our search under these  
11 circumstances that we're just going to comply. We're going  
12 to provide information. And I know that the responses --  
13 some of the general objections and the responses don't always  
14 say that. I'm not trying to defend that we have been, you  
15 know, as clear as Mr. Hackney would like us to be in those  
16 responses. I think, again, with the time that we were  
17 working under and trying to get everything out the door, we  
18 did the best job that we could with the full expectation that  
19 there would be opportunities after the fact for people to  
20 come and ask what we did and how we did it and whether they  
21 have that information assuming that they're sharing some of  
22 this work, too, that they are, in fact, reviewing the  
23 document production. It is fully searchable. Everyone can  
24 run searches on this thing and find information that is  
25 relevant to the issues that they are looking for. I know

1 that doesn't solve all the problems. I'm not suggesting that  
2 it does. But the parties can work together to get to a place  
3 where the city would cooperate with reasonable requests to  
4 investigate and figure out for someone, if the request is  
5 limited, how and what we did to get the information and  
6 whether they have it. If the exercise is just do this for  
7 all 900 requests, it's extraordinarily burdensome and time-  
8 consuming and expensive. It was very hard for us to do at  
9 the time. It's no easier to do now.

10 THE COURT: I guess I'd like to see it myself, but I  
11 hesitate to look at it if it has mediation confidential  
12 documents in it, so maybe I should wait.

13 MR. IRWIN: We will have that clean production  
14 within the next couple of days, your Honor. You mean the  
15 production itself?

16 THE COURT: Right.

17 MR. IRWIN: Yeah. We could have that in a few days.

18 THE COURT: All right. Anything further, sir?

19 MR. IRWIN: Oh, I should mention with regard to the  
20 priv log, the burden would be the same. The burden for the  
21 city to generate a priv log around a specific issue would not  
22 necessarily be dramatically reduced, and we'd have to review  
23 the same group of documents to generate an appropriate priv  
24 log. I don't want to belabor -- a lot of the same points  
25 have been made by county counsel in connection with motions

1 to compel directed at them, but in this particular exercise,  
2 in these circumstances, I know that Syncora, like almost  
3 everyone in the room, I believe, is taking the view that priv  
4 logs are not a good use of resources in these circumstances  
5 and that it is my view that there should be a good reason to  
6 compel even a limited priv log. And I did not hear the  
7 articulation of why it is that some of these communications  
8 should be probed further as they relate to the grand bargain.  
9 It would be an exercise in, you know, us spending all of the  
10 time and the money that it would require to have people  
11 generate this log, and I just -- I don't see to what end.

12 THE COURT: Any reply, Mr. Hackney?

13 MR. HACKNEY: Your Honor, I do, but because this  
14 motion, I think, does implicate other people, I know that Mr.  
15 Marriott --

16 THE COURT: Oh, all right. Yes. Go ahead.

17 MR. MARRIOTT: Good morning again, your Honor.  
18 Vince Marriott, Ballard Spahr, EEPK. I understand Mr.  
19 Irwin's concern in the time allotted to tag documents  
20 responsive to each document request. I have a different view  
21 on interrogatories, which we'll get to when we get to the  
22 interrogatories, but on the document requests I'm sympathetic  
23 to the problem. On the other hand, it seems to me it's not  
24 unduly burdensome. When we speak about an index, in my mind,  
25 what I'm -- what that means to me is these documents

1 necessarily fall into categories, documents relevant to the  
2 value of assets, documents relevant to the build-up of the  
3 projections, documents relevant to calculation of the pension  
4 claims, those sorts of things. It seems to me it ought not  
5 to be too terribly burdensome and it wouldn't surprise me if  
6 it already exists in some form unless the production was  
7 handled simply by saying, "Pull everything from Spot X, Y,  
8 and Z. We'll strip it for privilege, and then we'll produce  
9 it." I'm assuming that there has been some categorization  
10 done already, and that alone --

11 THE COURT: But Mr. Irwin's response to that is the  
12 documents are fully searchable, so if you want all of the  
13 documents relevant to, for example, art, you can search on  
14 art or DIA or some other pertinent term.

15 MR. MARRIOTT: Well, I guess the short answer to  
16 that is it would surprise me if the city already doesn't have  
17 some sort of broad categorization -- categorizations of the  
18 documents that were produced that could be provided to the  
19 parties to whom the documents were produced. If that hasn't  
20 been done even by the city, it seems to me as the producing  
21 party it really is the city's burden to do that and not the  
22 burden of all of us who just -- who got this document dump to  
23 create our own categories by doing our -- I mean our own  
24 searches. I don't think the federal rules contemplate the  
25 burden being allocated in that fashion.

1           The other point I wanted to make -- and it sounds as  
2 though the city has evolved in its -- how it will handle  
3 this, but Mr. Hackney made an important point, and we had a  
4 specific request in our document request directed to that  
5 point, and that is the city will be putting forth various  
6 experts to testify as to various points critical to the plan,  
7 pension claim amounts, projections, all of that. The  
8 creditors have no access to the information from which those  
9 expert opinions will ultimately be built up.

10           THE COURT: You mean no access outside of this  
11 process?

12           MR. MARRIOTT: Outside of this process. And one of  
13 our requests, for example, was all documents concerning facts  
14 or data supplied by the city to any witness the city intends  
15 to call as an expert. The city's response to that was you'll  
16 get that as and to the extent appropriate in connection with  
17 the expert discovery schedule. I don't think the facts and  
18 data provided to their experts -- that's fact discovery.  
19 That's not expert discovery. The report may be expert  
20 discovery, but the facts and data are fact discovery, and, in  
21 fact, we might be precluded from seeking it if we had only  
22 asked for it in connection with expert discovery. Now, if I  
23 understand what Mr. Irwin said, although there will be a  
24 delay, the city recognizes that -- or whether it concedes the  
25 point I've just made or not, will be providing what I've just

1 described, facts or data supplied to those experts the city  
2 intends to call. Is that a fair understanding of where the  
3 city is now?

4 MR. IRWIN: Well, I would state it a little bit  
5 differently, but the city is agreeing to provide the letters  
6 that constitute the analysis that will ultimately take the  
7 form of an expert report, I suspect, and baked into that will  
8 be --

9 THE COURT: Well, but that's a different question.  
10 What I hear Mr. Marriott asking for is you hire expert "X"  
11 and you give that expert facts and data which -- with a  
12 request to analyze those facts and data and come to a  
13 conclusion on something. He wants those facts and that data;  
14 right?

15 MR. MARRIOTT: Yes, which I think we're entitled to.

16 THE COURT: Are you willing to give that, or is that  
17 already in the documents you have given?

18 MR. IRWIN: Yeah. That's in the documents he's  
19 going to get, your Honor.

20 MR. MARRIOTT: Going to get or --

21 MR. IRWIN: That I indicated that if they're not  
22 swept -- part of the problem is I suspect -- and I can't have  
23 perfect -- again, I can't have perfect command of these  
24 250,000 pages. I suspect that what has happened is if it's  
25 facts or if it's data, it was probably captured by the sweep.



1 It was probably exchanged with someone, and it probably  
2 exists somewhere in the production. We didn't go in and  
3 separate --

4 THE COURT: Well, but I urge you to be careful  
5 because if an expert relies on a single document in coming to  
6 a conclusion about which that expert testifies that wasn't  
7 produced in discovery, we've got a problem.

8 MR. IRWIN: I understand. I'm not saying that. I'm  
9 trying to say something different.

10 THE COURT: You don't want -- you don't want to feed  
11 that.

12 MR. IRWIN: And that's why we did not go in and try  
13 to deliberately remove from our sweep anything --

14 THE COURT: It's not a question of deliberate or  
15 intentional --

16 MR. IRWIN: It's not. Remove.

17 THE COURT: -- or it may not be. I don't want to  
18 prejudge that issue. We don't even -- we don't even want to  
19 have to deal with that issue.

20 MR. IRWIN: And that's why we didn't have anything  
21 in our system to do that. We didn't remove information  
22 because we thought an expert might rely on it, and all I'm  
23 saying is it could very well exist in the document  
24 production, but it doesn't matter. I'm just making that  
25 statement and that observation.

1 THE COURT: Okay.

2 MR. IRWIN: It doesn't matter because we're going to  
3 give it to them now.

4 THE COURT: All right. Fine.

5 MR. IRWIN: So some of the language --

6 THE COURT: The answer to your question is yes.

7 MR. IRWIN: -- is to protect ourselves.

8 MR. MARRIOTT: That's all. I just wanted to make  
9 sure that I understood the answer was yes. Thank you.  
10 That's all I have until we get to the interrogatories other  
11 than --

12 THE COURT: Okay.

13 MR. MARRIOTT: -- to echo Mr. Hackney's concerns.

14 MR. STEWART: Your Honor, I'm Geoffrey Stewart of  
15 Jones Day, and I'm hesitant to stand up at all much less in  
16 the middle of their presentation. However, the question just  
17 raised does implicate a much broader issue that I think  
18 actually we are probably not in disagreement on. I'm going  
19 to refer to the E&Y analysis, which leads to the forecasts.

20 THE COURT: Um-hmm.

21 MR. STEWART: And we talked about the binder which  
22 is being prepared. E&Y has been working for the city for a  
23 long time, and their work starts -- and at least describe  
24 what they do, and then we can go to what the issue is. They  
25 have to start by capturing the financial information,

1     which -- where they start with city reports, but the city's  
2     records aren't what they could be. And you've heard Mr.  
3     Malhotra --

4             THE COURT: Right.

5             MR. STEWART: -- testify. So E&Y goes back and  
6     looks at other documents and gets more reports and keeps  
7     analyzing. Now, if Mr. Marriott or others would like a  
8     warehouse full of reports, raw reports, I'm sure we can have  
9     the truck deliver them to him.

10            THE COURT: Um-hmm.

11            MR. STEWART: But the objection that's been made --  
12     and Mr. Hackney had made this some time ago -- was that's not  
13     what they want. What they want and what they're going to get  
14     is E&Y compiling all those reports into a usable form, and  
15     it's going to be a spreadsheet in native format so their  
16     experts can pick it up and just start working with it. And  
17     that then is the foundation of the pyramid that leads to  
18     E&Y's forecast. I didn't want anyone, though, to be under a  
19     misapprehension or to run into an issue with the Court as we  
20     get to the confirmation hearing that E&Y produces these  
21     incredibly intricate spreadsheets, but the bales of canceled  
22     checks and boxes of property tax records and those other raw  
23     documents haven't been produced. E&Y had access to them.  
24     I'm sure that over the years they've been working they looked  
25     at them. Those haven't been produced, and we weren't

1 intending to produce them, but if anyone --

2 THE COURT: But you could offer to produce them.

3 MR. STEWART: If anyone wants a warehouse full of  
4 raw documents, many of which are not very accurate, let me  
5 know now because I will give them the key, and they can go  
6 sit in the warehouse all day, but what we've done is a  
7 different approach, and I didn't want there to be any  
8 misunderstanding about that.

9 THE COURT: All right. Thank you, sir. I  
10 appreciate that clarification.

11 MR. STEWART: Maybe, Mr. Hackney, before -- I don't  
12 know whether, Steve, you or Vince wanted to deal with it  
13 since I just added that after --

14 MR. HACKNEY: I can wait.

15 MR. STEWART: Okay.

16 THE COURT: Go ahead, sir.

17 MR. NEAL: I'll be very brief, your Honor. Guy  
18 Neal, Sidley Austin, for National Public Finance Guarantee.  
19 As you know, we filed a statement of unresolved issues, which  
20 we'll probably get to after lunch, but I want to make you  
21 aware that -- I mean I rise to join this time into what  
22 Mr. Hackney requested in terms of an affidavit or  
23 certification regarding the production, and here's why. We  
24 have sought -- when I say "we," it's U.S. Bank as indenture  
25 trustee for the DWSD bonds, the ad hoc committee of DWSD

1 bondholders, National, Assured, have asked for documents  
2 largely going to the DWSD. We got the same production as  
3 everyone else in the courtroom. I don't know if that  
4 production is largely responsive to Mr. Hackney's requests or  
5 largely responsive to mine and not to his, and that's why  
6 we're having this hearing. The documents being sought are --

7 THE COURT: So what would help you? What would help  
8 you make that determination?

9 MR. NEAL: Well, your Honor, it would either be an  
10 index broadly speaking by category, by Bates range for the  
11 documents, or, as Mr. Hackney indicated, some sort of  
12 affidavit or certification as to how and from whom they  
13 collected these documents. To give you one data point, there  
14 is a folder in the production, DWSD folder. It has 51  
15 documents from what I can see. My review is not complete.  
16 There is no custodian for the director of DWSD, no custodian  
17 identified, no custodian for the CFO of DWSD. So standing  
18 here today, I have no idea whether they've collected  
19 documents from the director or CFO of the DWSD. I raised  
20 this concern last week on Thursday with Mr. Irwin. He said  
21 he would get back to me. But the way to get back to me and  
22 to all of us would be a certification, absent that an index,  
23 preferably both. Thank you.

24 MR. BRILLIANT: Your Honor, Allan Brilliant on  
25 behalf of Macomb County by and through its county agency, the

1 public works commissioner. And, your Honor, I'm a little  
2 confused about the procedure here today, so I'm going to try  
3 to be brief and, you know, seek a little bit of direction  
4 from your Honor. We join in Syncora's, you know, general  
5 objections as well. We also had individual objections, many  
6 that had to do with relevance that came out in connection  
7 with the meet and confers that we had with the city. Unlike,  
8 you know, Syncora, we believe that those can be and should be  
9 dealt with today. We had put together --

10 THE COURT: All right. I want to do that, but I  
11 want to resolve this issue first --

12 MR. BRILLIANT: Okay.

13 THE COURT: -- if that's okay with you, sir.

14 MR. BRILLIANT: Okay. There's one issue that we  
15 have that is on our list, and, you know, that we do have a  
16 common issue with Syncora, and I don't know if your Honor  
17 wants slightly different arguments. You want to resolve  
18 things as it only relates to Syncora?

19 THE COURT: What is that issue?

20 MR. BRILLIANT: That issue is the date, you know.  
21 You know, we had --

22 THE COURT: Yeah.

23 MR. BRILLIANT: We had four specific document  
24 requests that requested documents prior to January 1, 2013,  
25 and we had, you know -- you know, we're willing to live with

1 the January, you know, 1, 2013, date with respect to our  
2 other requests, but with respect to those four, we had asked  
3 for confirmation from the city that they had gone back and  
4 searched --

5 THE COURT: Okay.

6 MR. BRILLIANT: -- for those documents, and we  
7 haven't gotten that, so I don't know --

8 THE COURT: I'm sure you're not the only one in that  
9 category.

10 MR. BRILLIANT: Yes, your Honor. Would it be  
11 helpful, your Honor? Maybe we can do this before we break.  
12 We can give you a couple of copies of our list. We shared  
13 them with the city yesterday, so we have --

14 THE COURT: That would not be helpful. Let me ask  
15 you just to hold onto that until we get to that phase of our  
16 hearing.

17 MR. BRILLIANT: Thank you, your Honor.

18 THE COURT: Sir.

19 MR. ANGELOV: Your Honor, Mark Angelov for Ambac  
20 Assurance Corporation. I will also try to be brief. I  
21 wanted to give the Court an example of what we believe is a  
22 fairly substantial category of documents that is not included  
23 in the production and, based on discussion today, doesn't  
24 sound like it will be forthcoming, and --

25 THE COURT: Go ahead.

1           MR. ANGELOV: -- this has to do with the manner in  
2           which the city calculated the amount of its OPEB claim. This  
3           number has changed at least four times from the original  
4           proposal to creditors and then through the four subsequent  
5           revisions of the plan. We've asked for things backing up the  
6           calculations, including assumptions, work papers and such,  
7           and we are not seeing any of the backup material with the  
8           exception of the very first \$5.7 billion valuation. And just  
9           to add also, I think to say that the documents are tech  
10          searchable and they will enable us to find this is a little  
11          bit of an oversimplification. We've searched for the word  
12          OPEB. We came up with hundreds of -- with hundreds of Excel  
13          spreadsheets and other large documents. And it's just not  
14          a -- frankly, a very productive effort.

15                 With respect to metadata also -- and I've raised  
16          this with Mr. Irwin -- the metadata does seem to be flawed.  
17          We have documents --

18                 THE COURT: Seem to be what?

19                 MR. ANGELOV: Flawed. We have documents that  
20          identify individuals as custodians, and when you look at the  
21          metadata as to who was on the e-mail, including bcc's, that  
22          person is not listed, so that makes it very difficult to  
23          review. Two more points I'd like to make. One is with  
24          respect to the date, and I will not touch upon the January 1,  
25          2013, limitation. It's really the other end of the city's



1 objection. I understand from the meet and confer the city is  
2 taking the position by saying that they will search for  
3 documents as of the date of their response that they will not  
4 be supplementing their production as new documents come into  
5 possession of the city, and we think that's problematic also  
6 considering how much will likely occur in this case between  
7 now and the confirmation hearing.

8 I would also like to add to the list of suggestions  
9 that Mr. Hackney had one more item. It is not altogether  
10 clear to us with respect to certain requests whether a search  
11 was undertaken. I don't want to go into the specific  
12 requests that Ambac made at this juncture. I understand  
13 that's -- we're going to save that for later, but one of the  
14 requests we propounded on the city sought information related  
15 to the water and sewer department. During the meet and  
16 confer, Mr. Irwin indicated that no search was undertaken  
17 with respect to those documents. However, to the extent they  
18 happen to be in the production, they didn't pull them out  
19 either, and the concern I have with that is the response to  
20 this particular document request states that subject to the  
21 objections, the city responds that it will produce  
22 nonprivileged documents in its possession, custody, or  
23 control to the extent they exist that are reasonably  
24 responsive to this request as the city understands it.  
25 That's the same boilerplate that we have in response to every

1 single one of our document requests, and we just can't tell  
2 sitting here today whether the city actually undertook the  
3 search with respect to all the other document requests that  
4 we made. And we think that if the city were to provide the  
5 requesting parties with specific information as to which  
6 requests they did searches for and which ones they did not,  
7 that would be very helpful. Thank you.

8 MR. HACKNEY: Your Honor, I'll try to be brief if I  
9 can. First, I just want to say that, you know, this isn't  
10 like treat Geoff Irwin like a pinata day. I know Mr. Irwin.  
11 He's a good guy, and I will tell you what I told him a week  
12 ago, which is I said that I didn't envy his --

13 THE COURT: He doesn't look very satisfied by that.

14 MR. HACKNEY: Well, I told him a week ago -- I said,  
15 "I think that you have no chance of getting this right under  
16 the schedule, and I don't envy you," but we are all living  
17 under the schedule. We have to figure out our way out of  
18 this, and I want to give you an example of what I'm looking  
19 at as someone who's reading this response. So this is our  
20 request Number 71, and it is for every revenue line item in  
21 Exhibit H to the disclosure statement, provide the following  
22 documents or data: "A," in Microsoft Excel format comparable  
23 data for every fiscal year from 1980 through 2007, so we're  
24 trying to look back at the city's history; "B," documents  
25 sufficient to show the related tax rates as applicable during

1 that period, documents sufficient to show forecasted tax  
2 rates, documents sufficient to show all changes in any tax  
3 provision or computational element, documents sufficient to  
4 show all forecasted changes in any tax provision. These are  
5 the heart and soul of a municipality's forecast. The  
6 response to this request was, "No." It was not, "We'll give  
7 it to you in expert discovery, you know. We'll get it to you  
8 at some point." It was, "No." So that's the type of  
9 response when you pick it up and you look at that request,  
10 you see that response, and then when we get together and  
11 we're under this expedited process and the city says, "Maybe  
12 we'll be magnanimous and we'll produce this factual data to  
13 you in two or three weeks," where my experts are waiting for  
14 the data, that doesn't work. The January 1, 2013, limitation  
15 does not work in a case where two of the key issues are the  
16 forecasts, which everyone knows are based on historical  
17 information, number one, and, number two, the art, which is  
18 this longstanding historical issue that played out over --

19 THE COURT: Why do you need 35 years?

20 MR. HACKNEY: What's that?

21 THE COURT: Why do you need 35 years?

22 MR. HACKNEY: I guess the -- I think the answer with  
23 respect to forecasting is that more is better. I mean if  
24 they come back and say, "Look, we can get you ten" --

25 THE COURT: Okay. Then why not a 135?

1           MR. HACKNEY: Well, because I guess we were trying  
2 to be reasonable to the city. I will tell you, your Honor, I  
3 got that one answered no matter which way you go. We got  
4 this forecast from our economist, so we said what goes into a  
5 forecast, what do you need to do to understand it and what do  
6 you need to do to build your own, and so he gave us this. I  
7 don't think there's anything magical about 1980. I think  
8 there's an expectation that to the extent the data is  
9 available, we'd like to see it. If they say, look, this is  
10 where the -- this is where you have to be practical. We  
11 cannot be playing this out in front of you because it doesn't  
12 work. I mean you can just see we're at "C" here. Okay. And  
13 if they came back to us and said the computer systems were  
14 different through '85, and then they brought in this system  
15 that we do sort of have access to, then we'd say, fine, go  
16 back to '85. I mean we can work it out, but we've got to  
17 have the methodology that went into their collection first.  
18 And I'm not trying to relieve creditors of our obligation to  
19 review the documents that we've requested. There's no  
20 question that we all have to take it upon ourselves to go  
21 through the production and bring our own affirmative view of  
22 what should have been produced but wasn't. What I am saying  
23 is make the city in parallel provide a certification that  
24 describes the methodology by which they collected all of this  
25 because what I'm really doing here, your Honor, is I'm kind

1 of -- I'm encouraging you to make an efficiency bet that  
2 rebooting this hearing for 14 days from now after they've  
3 produced to us a document that describes the method by which  
4 they collected the documents and we've gone through the  
5 documents so that we can meet in the middle and understand is  
6 a more efficient course, but in some respects I almost feel  
7 like it's the only course because here's the problem. If you  
8 say, "I'm going to sustain all the objections and we're  
9 not" -- you know, we're not given access to the information  
10 before January 1, 2013, that's going to be a big problem for  
11 the case. If you say, "I'm overruling that limitation  
12 today," well, then the city has got to go back and redo the  
13 entire production to pick up historical information, so if  
14 the city wants to continue forward, they need to work more  
15 practically with us and build a practical understanding of  
16 what was and was not produced.

17           And I wanted to make one last point on the DIA, your  
18 Honor, because I think there's something that's important  
19 going on here with respect to the DIA, and that is this. You  
20 know, when art motion one was up, as it's been described --  
21 art motion two is the one on Thursday -- Bruce Bennett got up  
22 and said words. Counsel to the city, Mr. Bennett, got up and  
23 said words to the effect of the DIA Corp. is the custodian of  
24 these documents, but we will facilitate people's access to  
25 the documents. And I think what's happened here with the

1 city is when we've asked the city, "We'd like an inventory of  
2 all the art," the city has said, "Well, subject to our  
3 general objections, we'll produce it to you," and the answer  
4 today was eventually, "I don't think we did produce one, but  
5 they're getting access to the DIA." What I want to know is  
6 if the city is saying all of the art-related information is  
7 in the hands of the DIA, then so be it. I will work through  
8 my subpoena with the DIA. First of all, I question that.  
9 There were a lot of historically important documents that  
10 happened back in the 1919 time period and 1920s that if  
11 someone can say, "No, no, it all went over to the DIA," fine,  
12 certify to that, but also say, you know, "That's not how we  
13 archive documents," or, "This is where the city's like  
14 historical records are. Let's be clear about that," fine.  
15 But second of all, in the course of deciding to enter into  
16 the grand bargain, Mr. Orr must have had documents pulled  
17 together for his review and consideration so that he could  
18 decide what to do here, so if the city is saying not only was  
19 the inventory just generally maintained by the DIA but even  
20 today we don't have one, we don't have a sense of what's in  
21 the art collection or we don't have anything when it comes to  
22 value outside of Christie's, that's fine, but they need to  
23 say that. I think what's happened, if you read their  
24 responses, there's kind of an effort to move it around a  
25 little bit here because I don't think they want to concede,

1 no, we didn't diligence this issue down to the screws and  
2 then come back and make a decision to do the grand bargain.  
3 We looked at this thing and said, "Ah, it's generally  
4 complicated. We're going to go the route of the grand  
5 bargain," and I think creditors are trying to understand what  
6 exactly did you do to understand this. This is a potential  
7 multi-billion dollar issue, so it's just one example of  
8 wanting to be clear about what do they have that relates to  
9 the art. If they're saying nothing, then we will work  
10 through our subpoena with the DIA. If they are going to at  
11 trial say, "No. We did do an investigation, and we obtained  
12 documents from the DIA in order to inform our decision," then  
13 produce them so that we can see what you got and what form --  
14 inform the decision. That's all I had.

15 MR. NICHOLSON: Your Honor, Michael Nicholson for  
16 International Union UAW. Just briefly I want to report to  
17 the Court that in terms of the index issue and the  
18 searchability issue, we were able to search -- we had a  
19 particular concern about the Detroit Public Library as it is  
20 implicated by the plan, and we were able to put a good  
21 paralegal on this and segregate out the documents in an hour  
22 or so, so I just wanted to affirm what Mr. Irwin said about  
23 that.

24 THE COURT: Okay.

25 MR. NICHOLSON: We found it to be satisfactory.

1 Your Honor, also, before you break for lunch, if I'm the last  
2 lawyer standing, Ms. Lennox and I have an issue to raise with  
3 you, a time-sensitive issue on another matter if you'll  
4 permit. It'll take about a minute.

5 THE COURT: Okay. Hold on that. We'll see if  
6 there's anyone else who wants to say anything on this. No.  
7 All right. What is your issue, sir?

8 MR. NICHOLSON: Your Honor, you entered an order  
9 approving a stipulation between the city and the UAW on  
10 Friday, I believe, and we discovered an error, and the  
11 parties have agreed to submit papers to you to get that  
12 approved. I'm informed by Ms. Ceccotti that they've been  
13 having some difficulty with your chambers figuring out the  
14 right format, and we need to get that entered so we don't  
15 have to meet today's objection deadline. And they couldn't  
16 get your clerk and wanted to reach you over lunch.

17 THE COURT: She's here.

18 MR. NICHOLSON: So if you could deal with this over  
19 lunch, it would be much appreciated.

20 THE COURT: So did you submit a Word version of an  
21 order amending the order that has the mistake in it?

22 MR. NICHOLSON: Jones Day is -- was doing the  
23 submitting, so I can't speak to that, but your colleague --

24 MS. LENNOX: And I have been in court, your Honor --

25 MR. NICHOLSON: Right.



1 MS. LENNOX: -- so we can certainly find out.

2 THE COURT: Okay. I will make this assurance to  
3 you. If there is an order that has been submitted, I will  
4 review it over the lunch hour.

5 MR. NICHOLSON: Okay, your Honor. We'll try to get  
6 it to you.

7 THE COURT: So you need to -- you need to see that  
8 that happens.

9 MR. NICHOLSON: Okay. Thank you.

10 THE COURT: All right. We will break for lunch now.  
11 I'm going to take this matter and the other matter under  
12 advisement. In the meantime, I want you to use your time to  
13 see if you can work out an agreement that's acceptable to all  
14 on the clawback issue and report back to me. And we'll  
15 reconvene at 1:30, please.

16 THE CLERK: All rise. Court is in recess.

17 (Recess at 12:07 p.m., until 1:30 p.m.)

18 THE CLERK: All rise. Court is in session. Please  
19 be seated. Recalling Case Number 13-53846, City of Detroit,  
20 Michigan.

21 THE COURT: All right. Who'd like to address what  
22 you've worked out on the issue of the disclosure of the  
23 confidential documents?

24 MR. SCHWINGER: Your Honor, Robert Schwinger from  
25 Chadbourne & Parke for Assured Guaranty. We have been able

1 to work out a procedure with the attorneys for the city.  
2 What we've worked out is that all the parties who received a  
3 disk drive will return the disk drive. Everyone who's  
4 received the disk drive is going to purge any paper or  
5 electronic copies that were made of that -- of the  
6 information or of anything they've prepared with information  
7 that's derived from that subject to one exception, which I'll  
8 get to in a minute. Everyone who is doing this purging and  
9 returning will certify and file a certification with the  
10 Court that they have done and completed this process. The  
11 exception that I mentioned is is that we've all agreed that  
12 to the extent that the city is going to do the reproduction,  
13 which I understand from Mr. Irwin to take place in a few  
14 days, two, three days, it should keep Bates numbers on  
15 documents the same except to the extent when a document is  
16 pulled, it'll just be an empty Bates number, won't be  
17 anything there. And if a party has prepared, say, a list of  
18 what's often referred to as issue tags for a particular Bates  
19 number, they can just keep the list of Bates numbers and  
20 tags, so, for example, if they know that document number six  
21 deals with DIA, they can keep that information so when they  
22 get the replacement set, they can just pop in the DIA code  
23 back to that document, but the substantive content of the  
24 document itself will have been eradicated, and this way we,  
25 you know, stop the bleeding immediately by having everyone

1 immediately return the disks.

2           With regard to the issue of costs which were talked  
3 about, that we did not resolve anything on because that  
4 involves obviously issues beyond just my client, but  
5 everyone -- the point is -- obviously is that parties will  
6 have costs of various kind depending on what they've done and  
7 how this remedy affects them. We, for example, you know, did  
8 processing of our own of the documents to the point where we  
9 saw this. We had the cost of making this motion and so on,  
10 and so those are issues which we're not marking as disposed,  
11 but we're just leaving them for the Court's further  
12 consideration as the Court sees fit and in such a time and  
13 manner as the Court sees fit.

14           THE COURT: Thank you. Is that your agreement, sir?

15           MR. IRWIN: Yes, it is, your Honor.

16           THE COURT: Does anyone have anything further to say  
17 about this matter?

18           MR. HACKNEY: I just wanted to ask a question of  
19 counsel or make a suggestion, which was it might be a good  
20 idea just to run some similar types of searches to the ones  
21 that found the documents in question rather than just  
22 excising the 120 or whatever that have been identified like  
23 searching for Rosen or Roberts or different things like that,  
24 nothing exhaustive, but I had heard from other people that  
25 the ones that have been identified weren't the extent of it,

1 so I just thought before we reproduce the new hard drives, we  
2 might just want to at least make an effort to make sure that  
3 we got them all to the best of our ability.

4 MR. IRWIN: Yes. Your Honor, the first letter that  
5 attempted to claw these back identified about two dozen or so  
6 that were subject to the mediation privilege. When I say we  
7 now have something in the 120 or so range, that's what I  
8 mean. We ran additional searches, and we -- as of right now,  
9 we think this is a -- we've got our arms around it, and we'll  
10 certainly --

11 THE COURT: Okay.

12 MR. IRWIN: -- do our very best when we reproduce.

13 MS. GREEN: Good afternoon. Jennifer Green on  
14 behalf of the Retirement Systems. Would it be possible to be  
15 exempt from the process if the minute we got the clawback  
16 letter we took all those out of our database before anybody  
17 saw them so we can keep coding? We've been coding for three  
18 days, and I have people at the office coding right now, so  
19 I've never seen the documents. Bob Gordon has never seen the  
20 documents. We took them out the minute we got the letter.  
21 Is there any way we can make an exception for people that are  
22 furiously coding and trying to categorize the documents as  
23 quickly as possible? I don't see how it would be any  
24 different if we had to return the hard drive and go through  
25 the whole rigmarole. I could sign a certification that I

1 haven't seen the documents and that no one else has, but I  
2 leave that to your Honor and that the city would be willing  
3 to take that stipulation. Thank you.

4 MR. SCHWINGER: Your Honor, to address that point,  
5 the problem is is that, you know, as of now the city has only  
6 identified a small portion. There's two dozen or so out of  
7 120, so there are plenty of documents out there which are  
8 being looked at and reviewed, and the whole idea is, as I  
9 said, to stop the bleeding right now immediately and  
10 having -- shutting it down with people preserving their issue  
11 coding seems to be the best way to do that. And I presume  
12 also that part of this process -- and it's essentially  
13 implicit -- that the city is known to -- have to essentially  
14 certify that they have now completed everything and be done  
15 and not -- you know, not have another round of this crop out  
16 in a week, but I would assume that was implicit in the --

17 THE COURT: I think any exceptions, Ms. Green, would  
18 become administratively burdensome because your client won't  
19 be the only one who wants such an exception, and then the  
20 whole enterprise loses value, so all right. I will accept  
21 your resolution of this. Did you plan to do an order?

22 MR. SCHWINGER: We can submit an order, yes, your  
23 Honor.

24 THE COURT: All right. And in the order say that  
25 any request for reimbursement of expenses or costs by any

1 party should be by motion, and we'll process any such  
2 requests in the ordinary course of our motion practice.

3 MR. SCHWINGER: Yes, your Honor. Thank you.

4 MR. IRWIN: Your Honor, may I make one clarification  
5 in connection with the last part of --

6 THE COURT: Yes.

7 MR. IRWIN: -- your comment? My understanding of  
8 the agreement certainly from the city's perspective is that  
9 that coding can be preserved, so I wouldn't want anyone to  
10 leave here today, I would hope, and destroy coding that they  
11 would then later incorporate into some sort of motion for  
12 reimbursement.

13 THE COURT: I agree. Looks like we got some volume  
14 back into our microphones. Okay. Let me turn attention then  
15 to the Official Retiree Committee's motion to compel Wayne,  
16 Macomb, and Oakland County to produce a privilege log. It is  
17 certainly the default and the standard that a privilege log  
18 be maintained; however, the case law establishes that in  
19 certain circumstances the Court does retain the authority to  
20 excuse the requirement that would otherwise apply to produce  
21 a privilege log. The standard that the cases seem to apply  
22 is that the requirement to produce a privilege log can be  
23 excused by the Court when the costs associated with  
24 production of such a privilege log substantially outweigh any  
25 potential benefit to the process that might result from

1 granting the motion. In these circumstances here, the Court  
2 has determined to exercise its discretion to excuse the  
3 production of the privilege log by the three counties. The  
4 record isn't very strong on this point, but it is sufficient  
5 for the Court to find that in the case of each of these three  
6 parties, it would create an extraordinary burden for them to  
7 produce the log that the Official Committee of Retirees seek  
8 here, and the record further establishes that the benefit to  
9 the process of receiving such a log is uncertain or minimal  
10 at best.

11           The Court also took into account that the city,  
12 who's, among all of the parties in the room, the most highly  
13 motivated to obtain the confirmation of its plan, has  
14 determined that it can proceed to seek confirmation of its  
15 plan without this privilege log, so in the circumstances the  
16 motion is denied.

17           Turning next to -- so much of Syncora's motion to  
18 compel as it argued here today, the Court must conclude that  
19 it was unfair, inappropriate, and inefficient for the city to  
20 send out to all of the parties who requested the production  
21 of documents the same production without any methodology for  
22 determining what parts, if any, of the production would apply  
23 to the request that that party made and without identifying  
24 how the documents that were produced were determined should  
25 be produced, so the Court will grant Syncora's motion, will

1     require the city to provide an affidavit or certification as  
2     to how it compiled the documents that it did, what search  
3     terms it used, what custodians it accessed. It will also  
4     require the city to provide a kind of an index of the  
5     documents, and this index should not merely list the  
6     documents but list the documents by what matter or issue in  
7     the case the document relates to.

8             The Court is troubled by the city's selection of the  
9     look-back period for the production, if that's the right  
10    terminology, of January 1st, 2013. The Court certainly  
11    agrees that for purposes of proceeding the way the city chose  
12    to proceed, it had to choose a date, but that date appears to  
13    the Court to be perhaps too -- would result in perhaps too  
14    much under-inclusion of the requested documents, so while  
15    I'll permit the city to proceed in the way it did, it appears  
16    to the Court it should go back to January 1st, 2012, as a  
17    default. Certainly there are specific requests for  
18    production of documents that go back before then, and so this  
19    order is without prejudice to the right of any party in  
20    seeking rulings on its specific requests for production of  
21    documents to seek requests -- to seek documents that go back  
22    even before then. And the Court will prepare orders on those  
23    two matters.

24            Mr. Irwin, how much time do you think it would take  
25    to provide -- or to comply with the order that the Court is



1 entering here today?

2 MR. IRWIN: It would certainly -- it would take a  
3 few days. I would say we should be able to do it by Friday.

4 THE COURT: Okay.

5 MR. IRWIN: May I ask one point of clarification?  
6 It would certainly -- we could certainly prepare the  
7 declaration by then. The indexing I -- we'll do the best job  
8 we can by then. We'll do the very best we can.

9 THE COURT: Well, I want to give you a deadline.

10 MR. IRWIN: We'll deliver it by --

11 THE COURT: So I need a commitment from you.

12 MR. IRWIN: -- Friday, and we'll do the best we can  
13 to --

14 THE COURT: Now, I'll say that it can be extended  
15 upon a showing of good cause, but I want to give you --

16 MR. IRWIN: Yes.

17 THE COURT: -- a deadline at this point at least you  
18 think you can meet.

19 MR. IRWIN: Yes.

20 THE COURT: What do you think?

21 MR. IRWIN: Friday.

22 THE COURT: All right. I'll give you till Monday.

23 MR. IRWIN: Thank you.

24 THE COURT: All right. With that ruling, I am  
25 willing to consider -- let's see. We have to do -- we have

1 to deal with Syncora's request to compel answers to  
2 interrogatories and then the witness list thing, too, but  
3 more than that, I'm certainly willing to consider any more  
4 specific issues that any party is interested in presenting to  
5 me or if you choose to wait until after this new production  
6 comes out with the certification, you can choose to do that,  
7 so we'll handle that on an attorney-by-attorney or case-by-  
8 case basis.

9 MR. MARRIOTT: May I speak briefly?

10 THE COURT: Yes.

11 MR. MARRIOTT: Vince Marriott, Ballard Spahr, on  
12 behalf of EEPK. We have interrogatory issues as well as I  
13 believe other parties do.

14 THE COURT: Um-hmm.

15 MR. MARRIOTT: There are some sort of global issues  
16 with interrogatory responses that are sort of easily at least  
17 iterated today.

18 THE COURT: Um-hmm.

19 MR. MARRIOTT: We're also prepared to go into the  
20 weeds of individual interrogatory issues as is Syncora.  
21 Whether to do that today or whether to sort of give you the  
22 high-level issues and then deal with the details at the same  
23 time we deal with the document production issues leave to the  
24 Court, whatever the Court --

25 THE COURT: Well, I want to get as much done today

1 as you all reasonably think we can and are willing to present  
2 to me today.

3 MR. MARRIOTT: Okay.

4 THE COURT: And if we have to go to tomorrow, I'm  
5 here tomorrow, too.

6 MR. STEWART: Your Honor, Geoffrey Stewart, Jones  
7 Day, for the city. The city has probably a couple of dozen  
8 document requests or interrogatories to which it seeks  
9 answers. Now, we've narrowed these substantially by meets  
10 and confer -- meet and confers, but there are still a number  
11 of them. These would not depend on anything the city was  
12 going to next do. This obviously --

13 THE COURT: Right.

14 MR. STEWART: -- is coming the other way. My guess  
15 is we could get all of that done in less than one hour and  
16 maybe 45 minutes even, but I think that's ripe for  
17 adjudication today.

18 THE COURT: Okay. One second, please. Do you want  
19 to be heard?

20 MS. O'GORMAN: Your Honor, Debra O'Gorman again on  
21 behalf of Macomb by its public works commissioner. We have a  
22 couple of issues to raise with respect to the city's  
23 objections to request for production. One relates to time  
24 period, and I do hope that that will get resolved at least  
25 partially by your order. There are two relevance issues --

1 well, relevance issue and one confidentiality issue that the  
2 city has raised that do require your consideration today.

3 One relates to the city's --

4 THE COURT: I need to cut you off because I want to  
5 get back to Syncora because we haven't quite finished up with  
6 them yet.

7 MS. O'GORMAN: Okay. Thank you.

8 THE COURT: Thank you for your patience.

9 MR. HACKNEY: Thank you, your Honor. Stephen  
10 Hackney on behalf of Syncora. So, first of all, Mr.  
11 Hertzberg has asked and we've agreed, to the extent the Court  
12 is agreeable, to have the motion to clarify witness testimony  
13 handled now because he has some conflicts later.

14 THE COURT: That's fine.

15 MR. HACKNEY: With respect to the interrogatories,  
16 as I said earlier, we are actually of the view that we could  
17 go rog by rog and go through them, and so I stand ready to do  
18 that whenever the Court wants to. Like I said, I didn't mean  
19 to jump us up to the head of whatever creditor process you  
20 had, but Mr. Arnault is going to argue the witness  
21 description --

22 THE COURT: Okay.

23 MR. HACKNEY: -- motion, so I'd ask him to take it.

24 THE COURT: Go ahead, sir.

25 MR. ARNAULT: Good afternoon, your Honor. Bill

1 Arnault on behalf of Syncora. I'd like to actually begin by  
2 addressing some of the comments and the notion that occurs in  
3 the city's response that this is just another instance of  
4 Syncora bringing a motion to bring a motion and being  
5 litigious just for the sake of being litigious. And I think  
6 it's helpful to provide a little bit of context and a little  
7 bit of background as to how this came about and what's  
8 actually driving our motion for more descriptive witness  
9 descriptions.

10 THE COURT: Well, before you do that, I have to just  
11 throw out to you in the hope that you'll answer it at some  
12 point the question that bugs me about your motion.

13 MR. ARNAULT: Sure.

14 THE COURT: Isn't the precise kind of information  
15 you seek by this motion done ordinarily in all other  
16 litigation in the context of interrogatories, and, if so, why  
17 wasn't that done here, or maybe it was?

18 MR. ARNAULT: Well, I think it was in connection  
19 with your order where you required the city to provide  
20 witness descriptions and descriptions of the topics that they  
21 would be testifying about, and we believe that that  
22 information was not sufficient, so while we could have asked  
23 it in an interrogatory, it seemed as though the Court also  
24 wanted the city to provide that information to presumably  
25 streamline the process and make depositions go a little bit

1 more smoothly and just continue moving along at the pace that  
2 we've been moving along. So while we certainly could have  
3 done that in the interrogatories, we also believe that there  
4 was -- the city had an independent duty to provide the  
5 information given the Court's order.

6 So, anyways, to back up and just -- so starting with  
7 the Court's order requiring the city to provide the witness  
8 descriptions, on April 18th we received the city's amended  
9 witness list, and as part of that list they identified 30  
10 witnesses. And as part of the descriptions for those  
11 witnesses, they provided descriptions like plan feasibility  
12 or DIA settlement and museum issues or the best interest of  
13 creditors. And we didn't really find those witness  
14 descriptions to be all that enlightening, so on April 28th, I  
15 think, about two weeks ago, we actually reached out to the  
16 city and sent them a note and said, "Hey, listen, this isn't  
17 very helpful. We think we're going to run into problems when  
18 we get into depositions, so would it be possible to update  
19 these and provide more practical, more detailed descriptions  
20 to hopefully make everybody's lives a little bit easier?"

21 THE COURT: Give me an example of a witness and what  
22 more information you would have thought would be necessary to  
23 comply with the Court's order.

24 MR. ARNAULT: So, for example, Kevyn Orr is one of  
25 the witnesses who is listed, and under Mr. Orr they list the

1 topic of plan feasibility. So plan feasibility obviously  
2 encompasses a lot of different things, but it certainly  
3 encompasses the forecasts and the assumptions that go into  
4 those forecasts and the data that's utilized to build those  
5 forecasts, so it would be helpful to know when we're prepping  
6 to take his deposition whether he's planning on talking about  
7 the forecasts and the ten-year projections or whether he's  
8 going to defer that to Mr. Malhotra, and that way we're not  
9 spending a couple hours or probably more than that preparing  
10 and then questioning him about those topics during his  
11 deposition or to take an example the DIA issues, so right now  
12 they've listed DIA settlement and museum issues. It would be  
13 helpful to know who's going to speak about the restrictions  
14 on alienability. Who's going to talk about the process that  
15 went into the grand bargain? Who's going to talk about the  
16 COP issues? So rather than these big general plan  
17 feasibility which they've listed for seven or eight  
18 witnesses, if we could get some more specificity, that's  
19 going to go a long way towards streamlining the process and  
20 just making sure that it's a better process for both the city  
21 and the creditors as well.

22 THE COURT: Well, if I were to grant your motion and  
23 put the words "more specificity" into my order, Mr. Hertzberg  
24 is not going to know how to comply with that --

25 MR. ARNAULT: Well --

1 THE COURT: -- because as far as he's concerned --  
2 and I don't know if he's right about this or not -- it could  
3 be argued here that Syncora would never be satisfied  
4 regarding the specificity unless it had his direct  
5 examination script. Is that the specificity you want?

6 MR. ARNAULT: No, no, no, definitely not.

7 THE COURT: No, but so you see my problem here.  
8 More specificity doesn't help me.

9 MR. ARNAULT: Well --

10 THE COURT: What do you want?

11 MR. ARNAULT: Well, it would be helpful to have for  
12 each witness that they plan to call a short narrative  
13 describing the topics that they are going to address beyond  
14 just this plan feasibility and the best interest of  
15 creditors. We don't need a bullet-by-bullet here's the  
16 questions that we're going to ask, but certainly the topic  
17 of, again, for example, plan feasibility can be broken down  
18 to more discrete subparts than what it's currently broken out  
19 to.

20 THE COURT: Right. Give me ordering language that  
21 you want me to consider.

22 MR. ARNAULT: The Court orders that the city shall  
23 provide witness descriptions that -- or shall provide a short  
24 narrative describing the specific topics that each of the  
25 witnesses will address, and we're even willing to provide



1 language that doesn't limit the city, so if they want to come  
2 up with new topics, they're not going to be restricted to  
3 those topics, but -- so I mean there is a -- it doesn't have  
4 to be bullet by bullet, but there is a middle ground that I  
5 think we can all agree on, and they certainly haven't found  
6 that middle ground given these general descriptions.

7 THE COURT: The language you just dictated is hardly  
8 more helpful than more specific than they already have  
9 because what you said was a narrative that more  
10 specifically -- that provides more specifics as to what the  
11 witness will testify to.

12 MR. ARNAULT: Yeah.

13 THE COURT: I need language from you that will avoid  
14 a second motion by Syncora which says, "Your Honor, we got  
15 this order, and the city gave us some more information, but  
16 it's not complying with the order."

17 MR. ARNAULT: Sure, and certainly we can work with  
18 the city on that if your Honor agrees that the descriptions  
19 aren't satisfactory as they currently are. We're happy to go  
20 back and come up with some language that provides the city  
21 with the specificity and the particularity that they need in  
22 order to provide adequate witness descriptions.

23 THE COURT: One second. Your proposed order says  
24 the debtor shall provide specific descriptions of the  
25 subjects that each of its fact witnesses will address,

1 specific descriptions of the subjects. Anything further?

2 MR. ARNAULT: No. Thank you, your Honor.

3 THE COURT: All right. Mr. Hertzberg.

4 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper  
5 Hamilton, on behalf of the city. Let's start with the  
6 witness that was brought forth by Syncora for example  
7 purposes, Kevyn Orr, in which we say that Mr. Orr is going to  
8 speak to the feasibility issues, et cetera, in our witness  
9 descriptions. It's hard for me to believe that they can  
10 stand there with a straight face and say that they need  
11 further information, for example, on what Mr. Orr is going to  
12 testify to. To refresh the Court's memory, they have deposed  
13 Mr. Orr, I believe, four times, maybe five times throughout  
14 this process. They've had him on the stand on cross-  
15 examination three, four times on all issues related to  
16 eligibility, related to the swaps. They've gone into several  
17 issues on depositions. And to say now that they're concerned  
18 that they don't know what he'll testify to as to plan  
19 feasibility, I don't know how they can really say that to the  
20 Court with a straight face. They know exactly what our  
21 witnesses are going to testify to. It's specified within the  
22 witness list, and let me give you a few examples. They want  
23 us to go through all the witnesses, so let's just take a  
24 couple and see what they're asking for. Charles Moore,  
25 Conway MacKenzie, plan feasibility. The plan was proposed in

1 good faith. I'm sure they know what the good faith standard  
2 is under the Bankruptcy Code. The city's historical,  
3 current, and future ability to provide adequate levels of  
4 municipal services. That's pretty clear what he's going to  
5 testify to as to the services and the ability to provide  
6 adequate levels. The city's ability to make payments  
7 contemplated in the plan. That's pretty clear that he's  
8 going to testify as to whether they can make those payments  
9 that they've put in their plan and whether the plan is fair  
10 and equitable, in the best interest of the city, businesses,  
11 citizens, and creditors. That's pretty clear, too. I want  
12 to just give the Court a couple more examples and show why  
13 it's not reasonable what they're doing here and why it's  
14 really a hyper-reflective act that they've done, once again,  
15 to file an emergency motion with this Court. James E. Craig,  
16 Detroit police chief. Plan feasibility. If the Court --  
17 refresh the Court's memory. Chief Craig testified as to  
18 service insolvency, so they already know what he's going to  
19 testify to because he was here. They cross-examined him on  
20 that. The city's historical, current, and future ability to  
21 provide adequate levels of police services. I think that's  
22 pretty clear what he's going to testify to. Let's just get  
23 another category.

24 THE COURT: We don't have that same sort of added  
25 specificity for Mr. Orr.

1 MR. HERTZBERG: No, but they've deposed Mr. Orr five  
2 times. They know exactly the type of testimony Mr. Orr is  
3 going to give. The same as to Mr. Malhotra.

4 THE COURT: Have they deposed him in regard to the  
5 plan?

6 MR. HERTZBERG: No, but they deposed him in regard  
7 to eligibility. They went into his whole background in  
8 regard to the swaps on I think it was three depositions  
9 during the swap period. Might be two; might be three. My  
10 memory is not a hundred percent on that, but they've gone  
11 over in detail. They've probably got over 20 hours of  
12 deposition testimony from Mr. Orr plus probably another six  
13 to eight hours that he was on the stand. They've got like 30  
14 hours of him testifying. They know exactly what his  
15 knowledge base is. They're sophisticated attorneys, and  
16 they've sent out interrogatories. If they want more  
17 information, they got it through interrogatories or they  
18 should have asked through interrogatories. It's not our  
19 obligation to write up summaries that are really discovery  
20 answers for them in advance of depositions. That's what  
21 depositions are for.

22 And I want to give the Court one more example just  
23 so -- from these different categories. I'm trying to break  
24 them into categories. Dan Gilbert. Plan feasibility.  
25 That's a generic term. We all know what plan feasibility is,

1 and it's used as a generic term throughout the witness list.  
2 Importance from a business and investment standpoint of the  
3 city, ability to capitalize and build on the efforts  
4 contemplated in the plan post-bankruptcy, the importance and  
5 effect of addressing the plan, among other things, the city  
6 blight, public safety, and urban revitalization. And I can  
7 keep going example after example, but they point to the --  
8 the two obvious ones is what they're going to point to, Kevyn  
9 Orr, Ken Buckfire -- or three of them, and Mr. Malhotra from  
10 E&Y. These are all parties. They know what they've -- what  
11 the divisions are and responsibilities, for example, what Mr.  
12 Buckfire has been involved in. They know. They've deposed  
13 him. Same with Mr. Malhotra, who's built up the projections.  
14 We all know what he's going to testify to, so it was just, in  
15 my opinion -- I don't know why the motion was filed. We  
16 tried to be reasonable on it. We never said we wouldn't do  
17 it. We don't have a requirement to do it. I believe the  
18 descriptions are adequate, but we offered to do it as we got  
19 closer to the deposition of the individuals. We're in the  
20 process of interviewing our witnesses. I can tell you I did  
21 two of them last week, at the end of last week, so we're just  
22 getting the testimony together. I offered in our pleading  
23 five days before to give further descriptions to help them,  
24 which I don't believe we needed to do, but we offered it, and  
25 it's still not enough. I don't believe that we have to do

1 what they're asking. I think what our offer is to give them  
2 additional information five days before is more than  
3 adequate. I think the information contained within the  
4 descriptions that we've already given is more than adequate,  
5 but we'll give them a little more detail. Thank you, your  
6 Honor.

7 MR. ARNAULT: Very briefly, your Honor, just to  
8 address a few points that Mr. Hertzberg made. First of all,  
9 we actually did not depose Mr. Orr in connection with  
10 eligibility. We certainly deposed him in connection with the  
11 swaps trial, but simply because we deposed him in connection  
12 with those topics doesn't mean that he revealed information  
13 relating to plan confirmation.

14 Secondly, Mr. Hertzberg mentioned numerous times  
15 that we all know what they're going to say and what people  
16 are -- what the witnesses are going to say, and if that's the  
17 case, it doesn't seem like it would be overly burdensome to  
18 provide additional information.

19 And then my final point, your Honor, is, again,  
20 going back to Mr. Orr and this idea that he's going to be  
21 testifying about plan feasibility -- and actually during the  
22 break Mr. Hackney talked with Mr. Hertzberg and asked him  
23 whether Mr. Orr would be testifying about, for example, the  
24 plan forecasts and the projections and the assumptions that  
25 went into that because that's a huge part of feasibility, and

1 Mr. Hertzberg said, "I don't know," so, again, that's just  
2 the type of clarity we're looking for so we're not spending  
3 hours and hours preparing for a witness who's not actually  
4 going to testify about those topics even though they are  
5 listed in their witness list. Thank you.

6 THE COURT: All right. The Court concludes that the  
7 witness list that was provided does adequately and fully  
8 comply with the Court's order. Accordingly, the motion is  
9 denied. If Syncora or really any party had sought further  
10 information about what each proposed witness' testimony would  
11 cover, that is ordinarily the subject of interrogatories and  
12 could have been and may well have been here in this case.

13 Let's talk about Syncora's interrogatories. And  
14 this is the process I foresee, ladies and gentlemen, where  
15 we're just going to slog through one by one with a ruling,  
16 and we'll work until we exhaust ourselves today, and we'll  
17 come back tomorrow.

18 MR. HACKNEY: Your Honor, Stephen Hackney on behalf  
19 of Syncora. I actually -- I have the charts that we prepared  
20 for you at your request. I'm happy to hand them up. They  
21 are -- they tend to be somewhat repetitive because of the way  
22 the city handled its objections, but maybe I will just hand  
23 up the portion that relates --

24 THE COURT: Okay.

25 MR. HACKNEY: -- to the interrogatories.

1 THE COURT: Whatever you think will make our process  
2 more efficient is fine with me.

3 MR. HACKNEY: May I approach?

4 THE COURT: Excuse me one second. You can take a  
5 break for a second. I've been advised that this time-  
6 sensitive order is here, so I want to get that done, so just  
7 stand down for a moment. So, Ms. Lennox, this order with  
8 the -- or the stipulation with the UAW for a new order, the  
9 new order is an order that amends or replaces the one that  
10 was entered on Friday?

11 MS. LENNOX: Correct, your Honor. It's just a  
12 corrected order.

13 THE COURT: All right. Can I call it a corrected  
14 order then?

15 MS. LENNOX: Absolutely, your Honor.

16 THE COURT: All right. I'll make that change. And  
17 then just so the record is clear, where the order refers to  
18 the stipulation, I'll also refer to the docket number of the  
19 new stipulation. Okay. Does that solve those problems,  
20 Chris? Yeah. Okay. All right. Okay. All right. I've  
21 signed that order. I assume it will be processed by the  
22 clerk's office right away.

23 MS. LENNOX: Thank you, your Honor.

24 THE COURT: All right.

25 MS. CECCOTTI: Your Honor, Babette Ceccotti for the



1 Auto Workers. Thank you very much for taking care of that  
2 for us.

3 THE COURT: Oh, all right. Well, you're welcome.

4 MR. HACKNEY: Are you waiting on me? Oh, I'm sorry.  
5 So --

6 THE COURT: But if you need to discuss something,  
7 that's fine.

8 MR. HACKNEY: No. That's okay. I didn't mean to  
9 stand with my back turned there. So what happened in the  
10 interim, your Honor, was that certain folks have said --  
11 while I'm sure many people have flights home tonight -- I  
12 know I do and would like to go home tonight -- there are some  
13 who maybe have actual conflicts tomorrow.

14 THE COURT: Okay.

15 MR. HACKNEY: And so some have suggested to me that  
16 there may be an efficient way to organize the afternoon that  
17 allows certain people to vent out of the courtroom and get  
18 back to work, and so I wanted to -- I don't know how to suss  
19 that out, but I wanted to suggest it to you.

20 MR. STEWART: Geoffrey Stewart, Jones Day, for the  
21 city. Your Honor, I think we have probably eight or nine  
22 respondents whose discovery responses we challenge, although  
23 these are not blunderbuss issues. These tend to be very  
24 selective. They could be resolved fairly quickly, and, if  
25 so, a number of the lawyers here would certainly -- we'd be

1 done with them, at least. I know Mr. Perez has mentioned  
2 that might --

3 THE COURT: Okay.

4 MR. STEWART: -- work for him and some others. I  
5 don't mean to jump the line, though, because I know there's  
6 so many things, but I think this might be able to go pretty  
7 fast.

8 THE COURT: Are there any creditors who believe that  
9 their objections or requests for additional information from  
10 the city could be handled very efficiently or promptly?  
11 Okay. So I'll give you the number two slot.

12 MS. QUADROZZI: Your Honor, if you put me behind  
13 Macomb, you might resolve mine before we get to --

14 THE COURT: Okay. I'll give you number three in  
15 case. Anybody else?

16 MR. NEAL: The DWSD discovery parties as well.

17 THE COURT: All right. Four and five. All right.  
18 Let's go that far and see how far we -- what time it is at  
19 that point. Mr. Stewart.

20 MR. STEWART: Thank you, your Honor. In keeping  
21 with your Honor's order, we've prepared a binder, and I think  
22 everyone has the sheets within it, but if they don't, we have  
23 spare binders.

24 THE COURT: Okay.

25 MR. STEWART: If I may approach with a --

1 THE COURT: Yes.

2 MR. STEWART: -- couple of copies. So, your Honor,  
3 the way we've prepared this is there's an inside table of  
4 contents with tabs listing everybody who we did have an issue  
5 with, but we resolved a number of these already today. Let  
6 me get another pen, though, because I left my pen there.  
7 And, in particular, we've already resolved today the issues  
8 for Number 4, which is National Public Finance Guarantee  
9 Corporation, Number 11, and Number 12, and we've  
10 significantly narrowed Number 2. A lot of the others are  
11 only single answer and, therefore, can go pretty quickly.  
12 The ones that will take the longest are going to be Ambac and  
13 Syncora, and I can take those in either order. It might be  
14 best, though, to start with Syncora because the way Syncora  
15 has done it, although we don't agree with the outcome, has  
16 been efficient. And what they -- most of their individual  
17 objections relate to things like commercial confidentiality,  
18 so -- which your Honor already dealt with with your  
19 confidentiality order. The principal -- and if I misstate  
20 it, Mr. Hackney --

21 MR. ARNAULT: Yes. Mr. Hackney just left the --

22 THE COURT: Is he going to be arguing for you?

23 MR. ARNAULT: Yeah. He's going to be arguing, so  
24 you may want to --

25 MR. STEWART: Well, why don't we move then over to

1 Ambac so --

2 THE COURT: Yep.

3 MR. STEWART: -- we don't -- thank you. Okay. Your  
4 Honor, Ambac is Tab Number 1.

5 THE COURT: Okay.

6 MR. STEWART: And what we've done, we have a  
7 separate sheet for each discovery matter in dispute that  
8 lists the document, what the request is, what the objections  
9 are, and what our reasons are. Okay. And some of these --  
10 and I did speak with counsel for Ambac, and so some of these  
11 are now moot, but there are about four or five that are not,  
12 and so I would just start with the first one, which is Number  
13 4. Number 4, your Honor -- and our document requests  
14 basically were the same with small tweaks to everybody, so  
15 Number 4 here will be like Number 4 to others, and it's self-  
16 evident. What it says is give us your documents about how  
17 the plan would impact your claims. And things like claims  
18 and so on I think were defined terms, but it's pretty  
19 obvious. Similar to Number 4 is the next one, Number 6, and  
20 I'm going to group three of these together because I think  
21 they can be decided together, which are documents showing  
22 your projected recoveries or other -- or condition or others  
23 under different recovery levels, and then Number 14, which  
24 Ambac has said is duplicative, meaning whatever the  
25 resolution is of the other two will resolve this one as well.

1 And the main arguments here really are not relevance. It's  
2 that it's either privileged or burdensome. I don't think the  
3 burden is very great, and we're going to put to one side  
4 things that are truly privileged because obviously those  
5 don't get discovered, but matters that a monoline insurance  
6 company analyzes in the normal course of its business for a  
7 credit that it has insured presumably is contained in just a  
8 few files. We're not talking about a mammoth search of  
9 everything. This should be pretty confined, so I don't think  
10 the burden would be very great. As mentioned, we have --  
11 privilege will be excepted from this. One of the objections  
12 is we already have copies of some of this. I'm not sure what  
13 they're talking about. Obviously we don't want to waste our  
14 own time. On the other hand, we are allowed to get  
15 nonconforming copies of things. But I view this as a pretty  
16 narrow request, and we're happy to make it more narrow, but  
17 what we're trying to get here is what documents they have  
18 that are not privileged that analyze what this plan will do  
19 for them or to them and how would they fare or others fare  
20 under alternative recoveries if the plan were different,  
21 which both of those, of course, relate to feasibility. And  
22 so maybe the best thing is for me to sit down, and we can  
23 just resolve that one and then move along.

24 THE COURT: Please.

25 MR. ANGELOV: Your Honor, Mark Angelov for Ambac

1 Assurance Corporation. I don't have hard copies of the slip  
2 sheet, so I'm using my iPad. It's in airplane mode.

3 THE COURT: There you go.

4 MR. ANGELOV: Okay. Thanks.

5 THE COURT: Tab 1.

6 MR. ANGELOV: Your Honor, with respect to these  
7 first three requests that the city raised, the main concern  
8 here is really burden and relevance. Just to set the  
9 background, what these requests really go to is how much  
10 Ambac would recover under the plan or under some alternative  
11 to the plan. The underlying financial information on which  
12 this type of analysis might be done is already in the city's  
13 possession. In fact, we are attempting to obtain that  
14 information through discovery from the city. These requests  
15 also reference the plan, which inherently puts the date  
16 period to starting sometime when the first plan appeared.  
17 It's very difficult to fathom how anything that a party in  
18 litigation has done with this type of analysis would not be  
19 work product, and so given the limited relevance of this,  
20 which we still don't quite understand, and the amount of  
21 effort it would go to conduct these searches and the  
22 relatively large amount of privileged material that would  
23 turn up, it just does not seem that the burden is worth the  
24 evidentiary value, if any, that these materials would have.

25 I would also add that when we discussed this in the

1 hallway trying to narrow the issues, counsel was insisting on  
2 a full ESI search, and the requests are very broad. They  
3 asked for any report reviewed by Ambac, so this really would  
4 be a massive undertaking, again, to find something where at  
5 best --

6 THE COURT: Fourteen?

7 MR. ANGELOV: I'm sorry.

8 THE COURT: Are you looking at 14?

9 MR. ANGELOV: I'm looking at 4, 6, and 14. On 14  
10 there is another issue, and it's really this. This really  
11 goes also to how little of this would be discoverable. Ambac  
12 has itself gone through a reorganization. It doesn't write  
13 new business. It doesn't analyze the creditworthiness of  
14 municipalities as an ongoing business concern, so, to the  
15 extent that it received any of this information or has  
16 generated it, it would be in connection with this litigation.

17 There's one more point that I'd like to add. Again,  
18 it's not clear to us exactly what the city is looking for,  
19 but to the extent that they're looking for perhaps some  
20 document which we don't think exists where somebody is  
21 opining us to what the recovery might be under the plan and  
22 whether that alternative would result in some sort of  
23 analysis under the best interest of creditors test, we're not  
24 sure that that's for anyone but this Court to decide. It  
25 really goes to a legal issue that may be the ultimate issue

1 in this case. We're just not sure what kind of probative  
2 evidence these requests are attempting to discover.

3 THE COURT: All right. Any reply? Stand by,  
4 please. All right. The Court concludes that Ambac should be  
5 ordered to produce documents in response to the city's  
6 documents requests 4, 6, and 14 except to the extent that  
7 they are attorney work product privilege, and if they are,  
8 there should be a privilege log provided with respect to  
9 them. What's next?

10 MR. STEWART: Next thing, your Honor, would be 15.  
11 We asked Ambac to produce common interest agreements. That's  
12 a standard request. Most of the other parties have produced  
13 them or have agreed to. The reason for it is that one of the  
14 privileges invoked is common interest in response. It's hard  
15 to know what -- how to deal with that unless we know what the  
16 agreement is, when it was signed, who it is among and all  
17 that. In conversations with certain people -- and I'm not  
18 suggesting it relates to this one -- I was troubled by a  
19 misunderstanding that I found with the common interest  
20 agreement, which is why it's all the more important to get  
21 these. Something doesn't become privileged because I have a  
22 common interest agreement with Mr. Hackney and send him  
23 something. It has to be a document that already is  
24 privileged and doesn't lose its privilege by dint of the  
25 transfer. So I want to make sure that no one is under a



1 misapprehension about that privilege, but I can't even go to  
2 first base without seeing the agreements, and that's all  
3 we're asking for on this one.

4 MR. ANGELOV: Your Honor, we do have a written  
5 common interest agreement with a number of parties in this  
6 case. We have oral common interest agreements with some  
7 other parties. We just don't see what disclosure of the  
8 actual document, which, by the way, contains in it a  
9 confidentiality provision, how that would aid the city's  
10 analysis. The existence of common interest can be determined  
11 just based on the facts and circumstances of the case, and  
12 here there's very little dispute that we had common interest  
13 with the other monoline insurers and with other parties with  
14 whom, frankly, at the Court's direction, we cooperated as a  
15 part of the swaps trial.

16 THE COURT: So your objection is relevance?

17 MR. ANGELOV: It's relevance, but it's also the fact  
18 that the agreement does contain a confidentiality provision.

19 THE COURT: Well, but parties can't protect  
20 something from discovery just by asserting its  
21 confidentiality. No. I agree that its relevance is arguable  
22 here, so you'll be required to produce your common interest  
23 agreements with other parties in the case. Next, please.

24 MR. STEWART: Your Honor, there's only one more for  
25 Ambac, which is the very last one, which is Number 37, which

1 asks for presentations to any executive team, board of  
2 directors, or committee addressing the City of Detroit or its  
3 debt, including but not limited to a certain person who they  
4 identified in their interrogatories. We're not asking for  
5 privileged information, but it's not uncommon in corporations  
6 for a board or other executive group to be briefed on  
7 something, and it's important to us to know what they were  
8 told, what was said about our plan and alternatives to the  
9 plan and alternative recoveries because that does go to  
10 feasibility. It's not just it's not necessarily something we  
11 might use in our case in chief, but they could put a witness  
12 up. We have the right to challenge and test their testimony,  
13 and that's the purpose of that request. Let me add that the  
14 main objection to it that I got -- I don't mean to be  
15 flippant about it -- was that this might be privileged  
16 because lawyers had looked at it and maybe edited some  
17 things. I don't know the full scope of that, but my  
18 understanding was that even if a lawyer did contribute to it,  
19 that doesn't mean there's the wholesale withholding of the  
20 document. Instead, it would have to be redacted to eliminate  
21 any privileged matters, and we're not asking for privileged  
22 matters. We think most of this is the sort of thing  
23 corporations do all the time as a matter of good management  
24 and that it is not principally a legal issue, particularly  
25 for an insurance company that is in the business of handling

1 claims. That's the very business. Thank you.

2 MR. ANGELOV: Your Honor, again, the concern here is  
3 that by teeing this up as something that might be a statement  
4 relating to the plan, this puts it awfully close to the  
5 current time and certainly well after Detroit filed for  
6 bankruptcy, so the concern here is, again, that what little  
7 value these documents might have is going to be outweighed by  
8 the massive search and privilege review that we're going to  
9 have to conduct. The attorneys at Ambac I can tell you are  
10 involved in preparing these presentations. It's not just  
11 that documents get channeled through attorneys to cloak them  
12 with privilege. Attorneys prepare these. They comment on  
13 them. They make revisions. And that becomes a part of the  
14 legal advice that's given to the company.

15 THE COURT: Well, the city does not seek that, and  
16 certainly the Court is in no position to order it, but there  
17 may be presentations by nonattorneys, so in the  
18 circumstances, I will order the production in compliance with  
19 this document request subject to attorney-client privilege  
20 but at the same time with a privilege log to the extent that  
21 such a privilege is claimed.

22 MR. STEWART: That's all with respect to Ambac, your  
23 Honor. Your Honor, the next is Syncora, and the way Syncora  
24 fashioned its objections was to have a preliminary statement  
25 with objections, which I thought was well done and useful,

1 and then the specific objections tended to be quite narrow,  
2 so I think the major issue that we have, not the only one but  
3 the major issue has to do with the threshold objection. I  
4 think there's been a lot of progress since that was written.  
5 And just to define what's not at issue, the city is not  
6 asking Syncora to search the files of its lawyers, any of its  
7 lawyers, okay, nor prepare a privilege log, and so as I  
8 understand it, this comes down to really two things. One is  
9 should Syncora be required to review the files of its  
10 consultants, of which it identifies two, FTI and I think it's  
11 Rothschild, and, second, should they be required, as the city  
12 was, to search for electronically stored information as  
13 opposed to things that are in hard copy. Now, and if I  
14 misstated that Mr. Hackney will correct me, I know, but  
15 that's how I read it. And just to be simple about it and to  
16 take them in reverse order --

17 MR. HACKNEY: Can I just interpose a question, your  
18 Honor? I'm working off this document that I received  
19 yesterday at five o'clock.

20 MR. STEWART: Is that another release, Steve? I  
21 think it should be the same thing. But those were the  
22 preliminary statement, and I think Mr. Hackney earlier today  
23 referred to it, and so those are the scope issues. Once  
24 those are resolved, most of the rest of the issues with a  
25 couple exceptions go away. And I'll be brief. I think just

1 like we had to go through the files of Conway MacKenzie and  
2 E&Y and others, so, too, should Syncora go through its  
3 advisors. And in this day and age, almost everything is  
4 stored electronically. Faxing things and sending papers over  
5 is very rare now. It's the exception. So a search that  
6 doesn't look for electronic information is a search that  
7 won't find very much, so those are the -- those are the  
8 threshold issues. And I believe -- and let's let Mr. Hackney  
9 speak -- if I misconstrued it, he will correct me, but I  
10 believe once we get past that, I got only a few narrow issues  
11 left.

12 MR. HACKNEY: Good afternoon, your Honor. Stephen  
13 Hackney on behalf of Syncora. I will express no small amount  
14 of frustration at the way this has been handled. When they  
15 gave us their document requests, I did two things. The first  
16 thing is I made a decision that we were not just going to  
17 stiff-arm the city. I think there is a realistic argument to  
18 be had here about why is the city imposing all of this  
19 discovery expense on its creditors when the overwhelming bulk  
20 of the information is in the city's possession. They have  
21 the burden at trial. The creditors like my client are  
22 proposed to lose 90 cents on the dollar, and yet now they're  
23 engaging in expensive discovery as well. And the utility was  
24 questionable, but I made a decision that I wanted to spend  
25 time trying to chop wood on information that was reasonably

1 in my possession that related to the ordinary course of  
2 Syncora. But I told the city once the city went into  
3 distress and everybody lawyers up and FA's up and people  
4 begin working in teams on the unbelievably complicated legal  
5 issues that go into this Chapter 9, they're all enmeshed in  
6 the financial issues. It's always just -- it's a tangle. I  
7 said once people lawyer up in connection with the distress of  
8 the city, the burden of sorting that out of trying to look  
9 through different advisors and even the client becomes far in  
10 excess of the benefit that can be had. And so I -- what I  
11 did then was I put their request to one side, and I thought  
12 what are documents that Syncora has that it generated in the  
13 ordinary course of its business that relate to the COPs or  
14 that relate to the GO bonds, and we list out all the stuff we  
15 produced. We produced very sensitive documents. We produced  
16 our underwriting manual. It tells you like how Syncora  
17 thinks about underwriting a bond insurance offering. We  
18 produced the credit files, the surveillance files, statutory  
19 reports, annual financial reports. I mean we made an honest  
20 to God real production to them, and what I said in my two  
21 meets and confer with them where I tried to understand what  
22 it is they were targeting, I've conveyed this burden issue  
23 from the start. You'll remember also that we filed our  
24 responses early to the city, so we filed a week earlier than  
25 everybody else did, so they've had this for a long time. I

1 spoke with Mr. Irwin in Detroit -- here in Detroit last  
2 Monday, and I said, you know, what remaining issues are  
3 there. I really feel like I've been a stand-up guy about  
4 this. I think Mr. Irwin was beset by the meets and confer.  
5 Folks were driving to him because he never got back to us  
6 with respect to what remaining issues there were for us other  
7 than to say we're very close. Then yesterday at five o'clock  
8 I get this thing in the mail that has all of these new issues  
9 that are coming back to the fore, commutation, bond  
10 purchases, bond sales, trustee communications, analysis of  
11 debt limits for LTGO bonds that we don't even wrap, all  
12 insurance department communications, every single one,  
13 doesn't matter whether it relates to Detroit or not, all  
14 public finance obligations on which we've ever established a  
15 case reserve ever, all of them, all reinsurance treaties, all  
16 commutation and settlement agreements. I am here to ask,  
17 your Honor, that our objections be sustained to this. They  
18 are rooting around in -- and what they're trying to do here  
19 when they're asking about bond purchases, commutation,  
20 settlements, they are trying to find out what we think about  
21 value under the city's plan, what the lawyers and the FA's  
22 and the client have worked together to think, and there are  
23 open negotiations -- well, maybe one day there will be, but  
24 there could be negotiations with us, your Honor, at which  
25 this information could be used against us to try and suss

1 out, you know, what can -- what will Syncora take. And I'll  
2 tell you that when I took their witnesses' depositions, when  
3 I took Ken Buckfire's deposition in the midst of him trying  
4 to go out and source the DIP loan and I said, "Tell me what  
5 you're asking people for. Tell me what they're offering you.  
6 I want to hear it," both he and Mr. Kohn said, "We are  
7 absolutely not going to tell you that. It is commercially  
8 sensitive." So I run through all of these requests. I see  
9 things that relate to commutation, bond purchases, bond  
10 sales, and I say that is commercially sensitive information  
11 that we ought not to be required to produce. What is the  
12 relevance to the city's, you know, case in chief on plan  
13 confirmation? When I look at things like all insurance  
14 department communications, all public finance obligations on  
15 which we establish a reserve, all reinsurance treaties, you  
16 have not seen narrowly tailored requests, and I think that we  
17 are the one party in this case, your Honor, who really  
18 grappled -- or one of the parties in this case that really  
19 grappled with our discovery responses, made a meaningful  
20 production, showed our work, invited them to confer with us,  
21 and to stick us with this yesterday at five o'clock I don't  
22 think is good enough, your Honor. I'm happy to talk about  
23 specific requests here and there, but I really feel like I've  
24 done my part to make this work.

25 MR. STEWART: Your Honor, I was actually just



1 dealing with the threshold issue of where they should search  
2 and should electronic information be --

3 THE COURT: Well, I find that I can't deal with an  
4 issue on a global basis.

5 MR. STEWART: I see. Okay.

6 THE COURT: For a specific request, I have to weigh  
7 and balance the burden and the benefit, so --

8 MR. STEWART: Okay. So perhaps we could just go to  
9 these because they're --

10 THE COURT: So, you know, pick one you want to start  
11 with, and let's talk about that.

12 MR. STEWART: Okay. Let's start with Number 8,  
13 which is the second sheet in here under Tab 3, your Honor.

14 THE COURT: Okay.

15 MR. STEWART: Okay. This is documents relating to  
16 any City of Detroit debt that they pay, dates they acquired,  
17 and so on. The objection is not relevance here. The  
18 objection is it's commercially sensitive, and there's a  
19 mediation privilege. But it is subject -- when Mr. Hackney  
20 earlier today talked about general objections and specific  
21 objections and how confounding it is, I wanted to applaud him  
22 because that's exactly true. When someone says I make a  
23 general objection, and subject to that these are my specific  
24 objections, and subject to that maybe I'll give you  
25 something, it's very hard to know what you're getting and not

1 getting. So I'm going to just assume here that if the  
2 documents were produced -- ordered produced -- and maybe you  
3 will and maybe you won't -- Mr. Hackney's general objection  
4 about I don't want to look for electronic documents and I  
5 don't want to have to go to our consultants would be swept up  
6 in your decision.

7 THE COURT: Well, but let's begin with question one,  
8 which is why is the debt held by Syncora and the price it  
9 paid for it and the date it acquired it relevant to any  
10 confirmation issue?

11 MR. STEWART: Syncora, in addition to insuring  
12 various COPs obligations and swaps obligations, has been an  
13 active buyer in the market of Detroit securities, and we  
14 don't know the details other than I think their proof of  
15 claim said they now hold \$200 million worth. That to me is  
16 probative of what they think recovery is going to be. It's  
17 something I might cross-examine a witness of theirs about if  
18 the witness were to make -- you know, take a certain position  
19 on the plan. I think it suggests other things as well. If  
20 someone is saying I think your plan is not in the best  
21 interest of creditors, you might say is that why you went and  
22 bought \$200 million of these securities that were in default,  
23 and you bought them on this and that date, and you paid this  
24 amount for them or you paid that amount for them. Mr.  
25 Hackney has said we might not need this in our case in chief,

1 and he could well be right about that, but our case in chief  
2 doesn't stop with our witnesses. They put up witnesses, too,  
3 and we have to be prepared for their witnesses. And I think  
4 the fact that Syncora is a major buyer of Detroit debt or at  
5 least was for a time is certainly probative of what they  
6 thought the economics of this plan looked like and what they  
7 may be thinking, and there could be another plan or the best  
8 interest of the creditors reflects something else, so that's  
9 why we ask this.

10 THE COURT: Mr. Hackney, what is your objection to  
11 Number 8 here?

12 MR. HACKNEY: Well, I want to be clear about  
13 something that I think has not been well quite right said,  
14 which is with respect to our responses, we always said  
15 subject to our general objections, so we incorporate the  
16 general objections. Where appropriate, we will add a  
17 specific objection, and then we have -- then we refer you  
18 back to the preliminary statement, so there are two things  
19 that are going on in a response. The first is we are  
20 preserving all of our objections, and then to allow you to  
21 understand what we did or did not do if we're refusing to  
22 produce information like on this one, we just refuse. If we  
23 are agreeing to produce information, we refer you back to the  
24 preliminary statement so that you can see what is being  
25 produced. So I disagree that we did not lodge a relevance

1 objection, and I disagree that we did not lodge a reasonably  
2 calculated objection, which is these are big parts of our  
3 objection, which is the potential utility of this information  
4 is sufficiently distended, your Honor, that it is not worth  
5 the burden to Syncora to have to go produce this, especially  
6 where it is commercially sensitive information, so it's not  
7 only commercially sensitive in the sense of being  
8 available -- sensitive to the market. It's also commercially  
9 sensitive vis-a-vis the city, which is why the existence of  
10 the confidentiality order that you were kind enough to enter  
11 doesn't protect us vis-a-vis the city. I mean they are --  
12 they want to see what we think about value. That's basically  
13 what he's indicating to you at a time when we hope to one day  
14 have negotiations with the city that could allow for a  
15 consensual plan. I mean letting them --

16 THE COURT: Right. I agree that the prejudice to  
17 Syncora from this production does outweigh its probative  
18 value, so this request will be denied. Next.

19 MR. STEWART: Your Honor, Number 9 also deals with  
20 debt. It's debt they sold, the price they sold it for and  
21 the date they sold it. This really would be the same as the  
22 previous one. It is probative. I mean if they put a witness  
23 up who's starting to give an opinion about the plan or the  
24 city or the feasibility, I would want to cross-examine that  
25 witness about, you know, money speaks more than words does,

1 and this is a very, you know, important part of what we do.  
2 Now, if he's concerned -- Mr. Hackney is concerned the city  
3 will somehow use it in negotiations, I'll agree this will be  
4 attorneys' eyes only as would documents for the previous one.  
5 I won't share them with anyone outside of Jones Day. Maybe  
6 when it becomes an issue at a hearing, we deal with it then,  
7 but I think we can deal with the prejudice issue, but I do  
8 think it does have probative value.

9 THE COURT: Once again, the Court will not order  
10 this. By the way, these rulings are not rulings regarding  
11 the relevance of these questions at trial. That's a  
12 different context and maybe a different result.

13 MR. STEWART: Okay. Your Honor, the next one is 18,  
14 and it had to do with limited tax general obligations.  
15 Mr. Hackney has said they did not write insurance with  
16 respect to those. We'll take that then as that there are no  
17 documents, so --

18 THE COURT: Okay.

19 MR. STEWART: -- we move on beyond that one. Okay.  
20 The next two have to do with communications with state  
21 insurance departments. What we're trying to get here -- I  
22 think this is -- could have been written more narrowly -- is  
23 any disclosures by Syncora to insurance regulators or similar  
24 people as to what they anticipate their recoveries will be  
25 under the plan or perhaps recoveries under some alternative

1 other than the plan, that's what we're trying to get at, and  
2 we're trying now to go to communications with a third party.  
3 And we'll content ourselves with response that is no broader  
4 than that if there is one.

5 THE COURT: And what's the relevance of that?

6 MR. STEWART: It's the same as some of the earlier  
7 ones which they have complied with, which is on the subject  
8 of the feasibility of the plan and alternatives to the plan  
9 in terms of what creditors would get under different  
10 scenarios. It would be revealing to us what they told their  
11 regulator. And if they were to say to the regulator, "Here's  
12 what we get under the plan. We don't like this, but it's  
13 certainly better than we're going to get under any other  
14 alternative," that would be very important to us because it  
15 goes straight to the issue of best interest of creditors and  
16 alternatives to the plan. They may well have nothing, and  
17 that could be dealt with very simply if they have nothing.  
18 And this, by the way, doesn't involve consultants, shouldn't  
19 even involve electronic discovery. Either they sent that to  
20 the insurance department or they didn't.

21 THE COURT: Mr. Hackney.

22 MR. HACKNEY: I guess a couple responses, your  
23 Honor, which is I think that when you ask the question how is  
24 this something that you could potentially use, when you get  
25 the answer back from Mr. Stewart that is along the lines of

1 if they told the New York Department of Financial Regulation,  
2 "We're only getting ten cents under the plan, but we're  
3 thrilled because it's so much better than would have happened  
4 if they hadn't filed for Chapter 9," I think the Court is  
5 entitled to look at that example of what they are looking for  
6 here and say that that is sufficiently unlikely to exist that  
7 I'm not going to put Syncora to the burden of searching for  
8 that information while Syncora is at the same time trying to  
9 deal with all of the press of its affirmative discovery of  
10 the city on an aggressive schedule. Does it mean that --  
11 does it mean that it satisfy -- that it doesn't satisfy the  
12 specific tests that we would use for potential relevance in a  
13 litigation? No. It could potentially be relevant. There  
14 could potentially maybe be a hearsay admission from someone  
15 against their interest saying that the plan's ten-cent  
16 treatment provision is better than we hoped. That is not the  
17 reality of what communications with the Department of  
18 Regulation are likely to show, and I think, again, it's the  
19 reasonable calculation of the discovery requests that are  
20 important. And what I would say to the city is remember the  
21 city is -- we're hoping to work through all these document  
22 requests by us of them, too, and they are going to be coming  
23 to us asking us to make sure our requests are reasonably  
24 calculated. That's the only way we're going to get through  
25 this thing together. And so if they've got me off searching

1 for communications with the regulator for -- on the if come  
2 maybe that someone said ten cents is better than we hoped, I  
3 would submit to the Court that that is not an efficient use  
4 of time by creditors and specifically Syncora.

5 THE COURT: I agree that the identified relevance of  
6 these documents is sufficiently attenuated that their  
7 discovery and production should not be required.

8 MR. STEWART: Your Honor, the next I'm going to jump  
9 to is Number 39 and Number 41. Okay. They both deal with  
10 reinsurance, and the reason we ask for that has to do with a  
11 narrow issue as to whether or not the claim here really is a  
12 Syncora claim or by reinsurance it belongs to somebody else,  
13 and they can perhaps just make a representation and we can be  
14 done, but we do need -- we do have the right to know that.

15 THE COURT: Sir.

16 MR. HACKNEY: This request was not limited to the  
17 Detroit debt, and I'm assuming that you --

18 MR. STEWART: It is, of course.

19 MR. HACKNEY: -- intend it to be. Yeah. Okay. I'm  
20 not certain enough to make a representation to the Court that  
21 I could guarantee was correct. I have a strong suspicion  
22 that --

23 THE COURT: Well, don't tell me your suspicions.

24 MR. HACKNEY: I won't. So it feeds into whether  
25 it's a problem to collect it because if they don't exist, it



1 wouldn't be. What I was going to say, though, is, you know,  
2 maybe I'm misunderstanding a little bit, but, you know, we're  
3 not litigating Syncora's proof of claim here, as I understand  
4 it, today, and so if I'm mistaken, I'm mistaken with respect  
5 to plan confirmation, but I'm thinking of the standards from  
6 the Bankruptcy Code that relate to their affirmative duty  
7 under plan confirmation. If there is an issue --

8 THE COURT: Well, isn't there an arguable standing  
9 issue if there's reinsurance?

10 MR. HACKNEY: I'm not smart enough to know the  
11 answer to that. I would have to look at it. I will tell you  
12 this came up last night when I landed, so, you know, I'm  
13 sorry I'm not prepared on that. I am. But I just don't  
14 know. I've had my hands out like this saying come talk to me  
15 so we can tie this up to avoid that, so I just don't know,  
16 your Honor. Mr. Perez is smarter than I am, and, you know --

17 THE COURT: Well, all right. Let me ask you to  
18 first determine whether there is any reinsurance and then to  
19 consult more directly with city's counsel to see if you can  
20 work this one out.

21 MR. HACKNEY: I'll do that.

22 THE COURT: I'm inclined to think it is relevant to  
23 the extent there is reinsurance.

24 MR. HACKNEY: I'll do that.

25 MR. STEWART: Now, your Honor, that takes care of

1 the specific ones we had in mind. However, Mr. Hackney had  
2 said something which takes me back to where I began. He had  
3 said, well, so we looked at the things that Syncora had, and  
4 we turned those over because we did this and we did that, we  
5 did the other, and that was fine. However, not included in  
6 his search were exactly those categories of documents that  
7 either were in the hands of a consultant or advisor to  
8 Syncora because he excluded that from his work or that  
9 existed in electronic form. Even those areas where he said,  
10 okay, it was relevant, I'm turning it over, I think we're  
11 entitled from Syncora just as they have received from us to  
12 get responsive documents that are electronically stored or  
13 are in the hands of their advisors because that is a choke  
14 point on their discovery up front that limits what we're  
15 getting even as to things that he said --

16 THE COURT: All right. Let me hear -- let me hear  
17 from Mr. Hackney on this. If discovery is otherwise --  
18 requested discovery is otherwise relevant, why is it an  
19 objection that it's in electronic form or that it's in the  
20 hands of a consultant?

21 MR. HACKNEY: Yeah. I agree.

22 THE COURT: Okay.

23 MR. HACKNEY: Well, it may not be -- standing alone  
24 those may not be sufficient, but I want to make sure I give  
25 the background here --

1 THE COURT: Okay.

2 MR. HACKNEY: -- okay -- because what I have said to  
3 them from the start is that the way Syncora's professionals  
4 work together is that the economic and financial analysis of  
5 a Rothschild that is involved in every aspect of the case is  
6 highly informed by the legal advice from Kirkland & Ellis.  
7 They just go hand in glove because of the nature of the  
8 bankruptcy overlay, so you can't say, oh, you know,  
9 Rothschild, tell us a little bit about the type of DIP that  
10 they're going to solicit, for example, or the terms of the  
11 DIP they're going to get like you could to a regular banker  
12 maybe out there in the world who literally is going to just  
13 say here's what the debt market is doing. You're talking X,  
14 Y, and Z. It's always going to be informed by the legal  
15 process overlay. That's a common aspect of bankruptcy. So  
16 our point here -- and by the way, I -- you know, I've raised  
17 this for multiple weeks, and this was not something that I  
18 had heard a problem of. What I heard, to the contrary, was  
19 make the representation that I just made to them, that that's  
20 how these professionals and lawyers work together, and they  
21 would back down on that. That's what I thought the state of  
22 play was. What this does play directly into, your Honor, is  
23 burden and reasonable calculation because what happens is you  
24 have to go toss the files of all the people that work at  
25 Rothschild or the other financial advisory firm that's

1     advising the client, and then you have to collect all of  
2     their e-mail and then review all of the requests against that  
3     in order to see whether there is potentially a nonprivileged  
4     piece of information. And what we say in our preliminary  
5     statement is, look, the yield of that exercise is not  
6     sufficiently worthwhile to merit the cost and the burden of  
7     doing it, and, you know, the city is obviously just raising  
8     this now from yesterday, and I thought that this was put to  
9     bed, but this is one of the more classic burden issues, your  
10    Honor, that I would say the likely outcome of it is  
11    sufficiently unlikely to yield a nonprivileged document that  
12    we shouldn't have to undertake the collection, the searching,  
13    the review, and then the cataloging on a privilege log.

14           MR. STEWART: Your Honor, this is not only what the  
15    city did. It's also what every other monoline insurer did.  
16    The only insurer who said they couldn't do this and it would  
17    be too burdensome has been Syncora. FGIC, Ambac, Assured,  
18    National, the others don't seem to have this problem. It  
19    seems to me that --

20           THE COURT: Did what?

21           MR. STEWART: In producing electronically stored  
22    information or in speaking with their consultants or others  
23    they work with. Of all the monolines, only Syncora has  
24    raised this as an issue, which suggests to me --

25           THE COURT: Okay. But you said the city did.

1 MR. STEWART: The city has done this, has done  
2 exactly this.

3 THE COURT: Yeah, but the city didn't produce a  
4 privilege log, did it?

5 MR. STEWART: No. I'm not -- and we're not asking  
6 for a privilege log. With Mr. Hackney from -- we've always  
7 agreed no privilege log, and you don't have to search any law  
8 firm's files either. All we're saying is please, if it's  
9 otherwise --

10 THE COURT: So you want Syncora to search its own  
11 files and its consultants' files --

12 MR. STEWART: Correct.

13 THE COURT: -- for documents that are responsive to  
14 requests for production that are otherwise relevant and that  
15 it otherwise complied with.

16 MR. STEWART: Correct, and we know which ones are  
17 relevant because Mr. Hackney has told us which ones he deemed  
18 relevant. We'll take his choice of relevance.

19 MR. HACKNEY: Your Honor, can I respond to this  
20 because --

21 THE COURT: Yes.

22 MR. HACKNEY: -- this is very important? With  
23 electronically stored information, you cannot just dip your  
24 toe in the pool. That's the problem. That's why I took  
25 their request -- so when they say all documents relating to

1 the COPs, that seems relevant. COPs are a creditor in the  
2 Detroit bankruptcy. What documents do you have relating to  
3 COPs, Mr. Hackney? What does Syncora have? The problem is  
4 that to comply with that seemingly relevant request you have  
5 to go collect tens or hundreds of thousands of electronic  
6 records from all these different custodians at Syncora and  
7 run searches against them, and the vast majority of the  
8 documents that you'll get back in the last, you know, 18 to  
9 24 months from the time when the city started entering  
10 distress and everyone started lawyering up is, number one,  
11 you're going to get a huge volume of information, and, number  
12 two, it's going to be privileged. That's why I took their  
13 requests, and I looked at them, and I said this is not going  
14 to work. This is going to impose too much burden on Syncora  
15 to have to review all of its electronic information for all  
16 of these requests. You can't just do a little bit of it.  
17 You have to collect everything in order to find out what's  
18 responsive to a particular request. I've done a ton of these  
19 productions in my life, unfortunately. What we did then  
20 instead was I went back and stated affirmatively what we  
21 could do, and that's when I went to my client. I said, look,  
22 what are the types of business documents that you maintain  
23 that are in a discrete locatable place like the credit memo  
24 or the surveillance memos that they write over the years as  
25 their -- if Fitch comes out and rates Detroit bonds or

1 downgrades it, Syncora will say do we agree with that. That  
2 type of information was produced, so they have the source  
3 business documents that were created in the ordinary course  
4 that relate to Syncora's decision to wrap the COPs, its  
5 decision to wrap the UTGOs, its underwriting manual, its  
6 surveillance of those positions over time, its financial  
7 reporting. They've got the stuff that relates to the  
8 business proper. When they get --

9 THE COURT: But only if Syncora stored it in paper.

10 MR. HACKNEY: No, no. If it was electronic, we also  
11 produced it. It was all electronic, but the difference, your  
12 Honor, is the way we collected it. It was -- we absolutely  
13 did not refuse to produce -- let me make this clear. I  
14 haven't done a good job.

15 THE COURT: Take your time.

16 MR. HACKNEY: We have never said that we would not  
17 produce electronic information, full stop. All of the things  
18 that we promised to produce affirmatively -- virtually all of  
19 them in the modern era were electronic documents that were  
20 produced. What I am trying to say today is that when it  
21 comes to things that are other than those that are readily  
22 identifiable by a business person at Syncora, so if it's  
23 other than the surveillance memos -- if you say the  
24 surveillance memos to someone at Syncora, that actually means  
25 something, and sometimes they're actually in a definable

1 electronic file on a drive that you can -- that you can get  
2 at. If you say I want all documents relating to the COPs,  
3 that's where you fall into the pool and go down a hundred  
4 feet of -- and you're just in the mix of all sorts of  
5 electronic information. You have to collect tons of it from  
6 all the different custodians, run the searches against it.  
7 That's where I told them, look, the reasonably calculated  
8 lever flips over at that point because now I'm doing an  
9 enormous amount of searching and collecting. It's very  
10 expensive and time-consuming. And the yield is going to be  
11 what? It's going to be what? Hearsay statements by someone  
12 that happen to not be privileged that are based on reactions  
13 to source information that's in the city's possession? I  
14 mean what's the point of the exercise? That's where we push  
15 back on them. So if Mr. Irwin -- if Mr. Stewart is able to  
16 come around at the end here and say, "Hey, we just want them  
17 to run a few searches," then I can tell you -- now I've got a  
18 more fundamental problem because now I'm right back to the  
19 thing that I was trying to avoid by structuring our  
20 production in the way that we did, and I will say it's a bad  
21 idea to do it, but if we're going to be ordered to do it,  
22 it's going to take a very long time. We won't be able to do  
23 that quickly. It's too much information. That's how all of  
24 these firms are nowadays, your Honor. You just can't get  
25 away from the electronic information. That's why you have to



1 be so practical about how you make your production.

2 THE COURT: Mr. Stewart.

3 MR. STEWART: I think we've beat this to death, your  
4 Honor.

5 THE COURT: Okay.

6 MR. STEWART: I don't think there should be a double  
7 standard is all.

8 THE COURT: The Court wants to be sensitive to the  
9 expenses of this litigation and has demonstrated that  
10 sensitivity here today. The difference here, however,  
11 appears to be that the information sought by the city is of  
12 more than just arguable relevance. It's of admitted  
13 relevance, so in the circumstances, the fact that it will  
14 take time and money and effort to cull it out of Syncora's  
15 files or those of its consultants or others doesn't seem to  
16 justify excusing its production, so the Court will grant the  
17 city's request to Syncora to require Syncora to produce this.

18 MR. HACKNEY: So, your Honor, just so I can clarify,  
19 I now have to go back and take all of the requests and run  
20 searches against all of the documents at Syncora and --

21 THE COURT: Well, I wouldn't say all but those that  
22 you don't argue relevance about.

23 MR. HACKNEY: The problem is it's -- your Honor,  
24 it's a misnomer to say we don't argue relevance because the  
25 entire theory of the production was reasonably calculated, so

1 reasonable calculation relates to a balancing of the  
2 likelihood that the effort is going to yield a relevant  
3 document versus the burden, so to say, "Hey, well, you didn't  
4 say that this wasn't relevant," my response is what I said  
5 was the low likelihood of yielding a relevant document did  
6 not justify the burden of making me search for it.

7 THE COURT: But the relevant -- but the documents  
8 that would be yielded are relevant.

9 MR. HACKNEY: Potentially if they're not privileged.

10 THE COURT: That's the difference.

11 MR. HACKNEY: But no, no. You have to consider the  
12 burden.

13 THE COURT: Oh, no.

14 MR. HACKNEY: No. I'm sorry. I mean the reasonable  
15 calculation analysis invariably acknowledges that there could  
16 be a relevant document, the outcome of the massive search,  
17 but I mean I have no small measure of frustration over this,  
18 your Honor, because I specifically tried to get out in front  
19 of this issue with the city. I specifically structured our  
20 production to make sense of the problem, and the city has had  
21 this for weeks and then does not come to me at any time in  
22 the last week and say this is the problem and brings it up at  
23 the end of this argument. I just --

24 THE COURT: Yeah. I don't like that either, but  
25 here we are. Let's move past this. What's next?

1           MR. HACKNEY: Well, your Honor, we will need a  
2 substantial amount of time to comply.

3           THE COURT: How much are you talking about?

4           MR. HACKNEY: Ninety days. I'm not kidding. I mean  
5 because remember -- I'm not being flippant -- because what  
6 I'm concerned about here, your Honor, is I've been one of the  
7 people in front of you that's saying let's not characterize  
8 each other's motivations. Okay. And I'm not going to do  
9 that to the city. I do want to tell you what the impact will  
10 be on me and Mr. Arnault and the people that are actively  
11 working on trying to get this trial ready for you in July,  
12 which is it is going to be a nontrivial distraction for us.  
13 So at a time when we -- when I try to triage this forward and  
14 get through it, now I'm -- and I should be pivoting to  
15 getting their discovery and getting ready for these  
16 depositions of which there could be 50 in the next, you know,  
17 40-some days, getting expert reports ready, now we have to  
18 pivot back to running all of these searches of Syncora's  
19 files when there hasn't been a showing that, for example, the  
20 credit memos that I gave them, the surveillance reports, the  
21 underwriting memorandum that I gave them -- I gave them the  
22 documents of the business. Mr. Stewart hasn't gotten up and  
23 said, "Yeah, that doesn't work for us. That's not  
24 sufficient. We want Document X." This is having the result  
25 of a fishing expedition on me, your Honor, and it's going to

1 be nontrivial amounts of distraction. It's a difficult pill  
2 to swallow when my entire philosophy of engaging with the  
3 city was designed to skin this cat, and I told them that from  
4 the start, and we were working, I thought, constructively to  
5 narrow, not broaden, because this undoes everything that I  
6 tried to do. And if that's the answer, that's the answer,  
7 but --

8 THE COURT: I am sure the city didn't like my ruling  
9 regarding their production of documents this morning either.

10 MR. HACKNEY: But you know what, your Honor? Number  
11 one, the city is the one who advocated for the accelerated  
12 schedule, and the city is admittedly the repository of rafts  
13 of information that are absolutely essential to confirmation.  
14 Syncora is not. Syncora is one creditor of many.

15 THE COURT: Well, but Syncora is a major litigant in  
16 this case --

17 MR. HACKNEY: It is.

18 THE COURT: -- and either has or will file  
19 significant objections, so this is the price of litigation.  
20 We need to move on.

21 MR. STEWART: Your Honor, we only have three or --  
22 we have about four more, and these will go very quickly. Tab  
23 4 has been resolved for now. Tab 5 we have one issue on --  
24 it's very narrow -- with Assured, and that's simply time.  
25 Although we had asked, I think, for documents back to the

1 beginning of 2013, they said they're only going to produce  
2 documents from the petition date forward and simply ask that  
3 the date be pushed back to the beginning of --

4 THE COURT: I'm sorry. Can you refer me back to  
5 where you are?

6 MR. STEWART: Tab 5, your Honor, which is Assured.

7 THE COURT: Okay.

8 MR. STEWART: We only have one.

9 THE COURT: We need to close the loop on one Syncora  
10 issue, which is time. Mr. Hackney says he needs 90 days.

11 MR. STEWART: We did a much bigger production in two  
12 weeks, your Honor.

13 MR. HACKNEY: Well, except that they really didn't.

14 MR. STEWART: Three weeks. Three weeks. It didn't  
15 take us 90 days.

16 MR. HACKNEY: But, see, that's the problem, your  
17 Honor, because when I say that I'm going to do it, I'm going  
18 to do it the right way.

19 THE COURT: Not only did they produce what they were  
20 required to, they produced what they weren't permitted to.

21 MR. STEWART: We get credit for that.

22 THE COURT: No.

23 MR. STEWART: I know.

24 THE COURT: What were you going to say, sir?

25 MR. HACKNEY: Well, I'm just saying that I'm going

1 to do this the right way.

2 THE COURT: Great.

3 MR. HACKNEY: And that's why I know what goes into  
4 it. That's why I'm not making 90 days up just to wrong-foot  
5 you and say, ha, now I'm going to defeat your ruling.

6 THE COURT: It feels a little like that.

7 MR. HACKNEY: Yeah, but you got -- you know, your  
8 Honor, if I could --

9 THE COURT: Careful here.

10 MR. HACKNEY: I could, yeah, but --

11 THE COURT: Be very careful where you go here.

12 MR. HACKNEY: Well, no, but what I want to talk to  
13 you about is the challenges of electronic discovery. It  
14 is -- it's not easy.

15 THE COURT: I'm going to give you 30 days. If you  
16 just -- if you are working diligently on it and need more  
17 time, you file a motion to extend, and I will grant it.

18 MR. HACKNEY: Is there any way that we could target  
19 what it is I'm searching for because if it's all of the  
20 requests --

21 THE COURT: I think that's a great idea. I think  
22 the two of you should talk and narrow this electronic  
23 discovery as much as you possibly can.

24 MR. HACKNEY: What is the --

25 MR. STEWART: I'd welcome that. And Mr. Hackney and

1 I, I'm sure, can work on that.

2 THE COURT: Please, and then prepare an order.

3 MR. STEWART: Good. All right.

4 THE COURT: But 30 days subject to extension for  
5 cause shown.

6 MR. STEWART: Okay. Thank you. So, your Honor,  
7 we're now on Assured, and there's only this one issue with  
8 Assured.

9 THE COURT: Okay.

10 MR. STEWART: And that's the time they in their  
11 general objection said they were only going to start on the  
12 petition date. I think we asked for the beginning of the  
13 year, and that would still be fine with us, but we think  
14 the -- just confining it to the petition date forward is an  
15 artificial limitation. Outside of that, we have no other  
16 issues with Assured.

17 MR. SCHWINGER: Robert Schwinger for Assured. I  
18 think he may have misstated there what Assured stated in its  
19 responses. Our position was is that in terms of producing  
20 documents, we would cut off production as of the petition  
21 date because at that point we've gone into an attorney work  
22 product mode, and virtually everything is going to be -- is  
23 going to be privileged at that point the way parties  
24 typically do where productions tend to get cut off at the  
25 time litigation is filed. We didn't have any objection to

1 producing prior to that, and our position on that was to the  
2 extent it bore upon the issues, we were happy to produce it,  
3 and we've gone through that. We have, by the way -- and I  
4 have no idea what other parties have done in terms of  
5 production. Assured produced closing in on 20,000 pages of  
6 documents, and that's just one party. The city did 250,000  
7 pages, you know, for everyone, and we've produced e-mail,  
8 electronic discovery and so on, so we've made a very  
9 substantial production here. I don't think we've unfairly  
10 cut everything off.

11 THE COURT: Mr. Stewart, the issue is the production  
12 of documents since the petition, not before the petition.

13 MR. STEWART: Yeah. He's right, Judge. He's right,  
14 and I'm wrong, so we don't have an issue.

15 THE COURT: All right.

16 MR. SCHWINGER: Okay.

17 THE COURT: You're all set, sir.

18 MR. SCHWINGER: Thank you.

19 MR. STEWART: Next is U.S. Bank. It's Tab 6, U.S.  
20 Bank National Association.

21 THE COURT: Is anyone here from U.S. Bank? Yes,  
22 yes. Two. We have two.

23 MR. STEWART: Oh, we'll welcome either of you or  
24 both. All right. This I think relates to water and sewer  
25 bonds, and I believe -- or the end result is U.S. Bank did



1 not agree to produce anything and has not answered any  
2 interrogatory, so we have gotten zero from U.S. Bank. And  
3 they said that the reason was that everything would be in  
4 expert materials, and maybe it is, but there's no evidence  
5 they actually made a search -- God bless you -- to determine  
6 that, and if they're right, so much the better, but I  
7 question whether or not it's appropriate to interpose that  
8 kind of a blanket objection and provide no discovery  
9 whatsoever.

10 THE COURT: Well, can you give me an example, just  
11 an example, of a document request --

12 MR. STEWART: Give me a moment. Could I see the  
13 U.S. trust document? Excuse me, your Honor.

14 THE COURT: Sure. All right. While you're doing  
15 that, I'm going to consult with Chris for a second.

16 MR. DAVIDSON: Your Honor, this is Paul Davidson for  
17 U.S. Bank on the telephone, and I'd like to be heard after  
18 the city finishes.

19 THE COURT: Yes, sir.

20 MR. DAVIDSON: Thank you.

21 MR. STEWART: Your Honor, here's one, if I may.

22 THE COURT: Yes.

23 MR. STEWART: Number 7. It says all documents  
24 relating to any research, studies, reports, or analysis  
25 conducted by, requested, reviewed, or received by you or on

1 your behalf regarding valuations of DWSD. There are others  
2 that --

3 THE COURT: Okay. That gives me a idea. Thank you.  
4 Did we lose Mr. Davidson?

5 MR. DAVIDSON: No, your Honor. Mr. Davidson is  
6 here.

7 THE COURT: All right. Can you move that mike down  
8 so I can hear him a little better? All right. You may go  
9 ahead, sir.

10 MR. DAVIDSON: Yes, sir. In response to both  
11 document requests and the interrogatories, we have explained  
12 to the city that there is no analysis that the U.S. Bank has  
13 performed independent of work that the attorneys and its  
14 consultants have done post the filing of this case, so, in  
15 other words, the lawyers have engaged consultants in  
16 preparation for trial after the case was filed, and any  
17 analysis that would be responsive to the interrogatories and  
18 the document request would be privileged communications. We  
19 thought that we made that clear, but if not we'd like to make  
20 it clear now that that is the case. The custodians that  
21 would have had responsive documents are the account  
22 administrators for the bonds, and they have searched for  
23 documents, and we're happy to represent that to the city.

24 MR. STEWART: All right.

25 MR. DAVIDSON: And I would -- your Honor, Paul

1 Davidson again. I would add that prior to responding to the  
2 interrogatories and the document requests, I had a  
3 conversation with Mr. Irwin, and we agreed that neither the  
4 city nor the bank would be required to produce a privilege  
5 log with respect to these requests.

6 MR. STEWART: Agreed. So my question -- I believe  
7 Mr. Davidson talked about documents prepared post-filing, and  
8 if he's saying there are no post-filing documents, we'll  
9 accept his representation since he's the --

10 THE COURT: He says there are no pre-filing  
11 documents in response to your request, and he says that all  
12 of the post-filing documents are privileged.

13 MR. STEWART: Okay.

14 THE COURT: Does that about cover it, Mr. Davidson?

15 MR. DAVIDSON: That's correct, your Honor.

16 MR. STEWART: Then we're done with Mr. Davidson.

17 THE COURT: Right. Then you're done. All right.

18 MR. STEWART: The next is Tab 7, the ad hoc  
19 committee of DWS bondholders. I don't know who represents --

20 MR. SIEGAL: On the phone, your Honor, this is Craig  
21 Siegal from Kramer Levin on behalf of the ad hoc committee of  
22 DWSD bondholders.

23 THE COURT: Thank you, sir.

24 MR. STEWART: Your Honor, this -- we have various  
25 requests. The answer was that they had not conducted any

1 studies and so on. We've not gotten any discovery  
2 whatsoever. If counsel will make the representation a search  
3 was made and no documents were found, I'll accept it.

4 THE COURT: Sir.

5 MR. SIEGAL: Yes, your Honor. This is Craig Siegal.  
6 We make that representation just like with respect to the  
7 trustee.

8 THE COURT: Thank you.

9 MR. STEWART: And we're done. Next is Tab 8, and,  
10 your Honor, I think we're getting -- we have one more after  
11 this. Tab 8 is Berkshire Hathaway Assurance Corporation.  
12 There they -- we made various requests. We got a general  
13 objection that we sought documents that are not relevant to  
14 whether the plan can or should be confirmed as with respect  
15 to the water and sewer department, and that is kind of all we  
16 got. And I think we asked for more, and I don't think that  
17 relevance is confined to that. It's a broader test, as we've  
18 discussed earlier.

19 THE COURT: And so what kinds of documents did you  
20 request from this creditor?

21 MR. STEWART: It was the same as -- I'm told it was  
22 the same as we did with respect to U.S. Bank, Judge, so I  
23 could just -- what's that? This will be more like we've done  
24 with Syncora and others. A good example, your Honor, would  
25 be -- I'll just choose one, your Honor, more or less at

1 random, which would be document request Number 6, and this  
2 was the same document request that most of the parties got  
3 from us. All documents related to any research, studies, and  
4 so on, regarding your financial -- projected financial  
5 conditions of other creditors under different recovery  
6 levels, and that may not be the best one to have chosen, but  
7 it's the same set of document requests we've been dealing  
8 with with pretty much everybody else.

9 MR. CHRISTY: Good afternoon, your Honor. Tom  
10 Christy on behalf of Berkshire Hathaway. First of all, let  
11 me state that we've given them over 5,000 pages of documents.  
12 To say "that's all we got" I think is a little understating  
13 the case. All I got from them at 5 p.m. last night was a  
14 one-page objection stating their problem with our discovery  
15 was that we repeated the same general objection over and over  
16 again to every question, and if you go through most of the  
17 questions, yes, we repeated that general objection just like  
18 I heard Mr. Hackney complaining that the city itself did in  
19 response to Syncora's request. The mere fact we've repeated  
20 the general objection I don't think is the point. And if you  
21 go through our interrogatory requests -- responses and our  
22 request for production, we have very often given them  
23 everything we did. We've simply exerted the objection as an  
24 abundance of caution just like the city has. And you can  
25 look at Interrogatories 1 through 10 where they request the

1 identification of witnesses, and we've asserted this same  
2 objection but then given them the name of the witness. If  
3 they have specific questions they feel we've been  
4 nonresponsive to, I'd like to know what there is. I did not  
5 receive any call as to meet and confer. As far as I know,  
6 nobody in our New York counsel has received any call as to a  
7 meet and confer on these particular questions. I think we've  
8 been responsive to most of them. They may not like the bound  
9 where we're drawing relevancy, but I'd like to latch onto  
10 Mr. Hackney's argument earlier, which you granted, you know.  
11 There's a bounds here to where relevancy is, and I would ask  
12 you to uphold our objections on the same ground that you  
13 upheld some of his earlier. Thank you.

14 MR. STEWART: Your Honor, I'd suggest -- we'll look  
15 at their document, but I think our concern had been that they  
16 did produce things -- and I did misstate that, for which I  
17 apologize -- with the limiting statement up front we don't  
18 know what they withheld on grounds of relevance, so it's hard  
19 to know. It is the same issue Mr. Hackney identified. The  
20 best way through it, I think, will be let me look at their  
21 production.

22 THE COURT: All right.

23 MR. STEWART: If I have a problem, I'll call them.  
24 Our last one has to do with Macomb County.

25 MR. BRILLIANT: Thank you, your Honor. If I could

1 be heard just for one moment. Allan Brilliant on behalf of  
2 Macomb County by and through the public works commissioner.

3 THE COURT: One second. I need you to get nearer to  
4 a microphone.

5 MR. BRILLIANT: Again, for the record, Allan  
6 Brilliant on behalf of Macomb County by and through its  
7 county agency public works commissioner. Your Honor, the  
8 last one, Tab 9, is really not directed towards my client,  
9 instead to the county executive of Macomb County, Mr. John  
10 Schapka, who's the corporation county (sic) for Macomb  
11 County. He sat here all day, but he needed to leave at three  
12 o'clock to go to the second floor in connection with, you  
13 know, the mediation that your Honor ordered.

14 THE COURT: Okay.

15 MR. BRILLIANT: He asked me to tell your Honor when  
16 he left that his expectation is that he could be back by four  
17 or 4:30 today. If that doesn't work for the Court and for  
18 counsel, he could be available tomorrow.

19 THE COURT: You're going to settle that that quick,  
20 huh?

21 MR. BRILLIANT: Well, you know, I think it's just a  
22 preliminary meeting, your Honor, but he thought it would last  
23 about an hour.

24 THE COURT: Oh, all right. Thank you for bringing  
25 that to our attention, sir. We'll accommodate him if not

1 today another time.

2 MR. BRILLIANT: Thank you, your Honor.

3 MR. STEWART: Your Honor, then we will put that off  
4 until later.

5 THE COURT: Right.

6 MR. STEWART: Then with that we are done.

7 THE COURT: Okay.

8 MR. HACKNEY: Can I clarify one matter, your Honor?

9 THE COURT: Sir.

10 MR. HACKNEY: Just in some of these subsequent  
11 motions, there were, you know, exceptions made for the post-  
12 petition documents, and I wanted to know whether -- is there  
13 a reason -- does that apply to me as well or does it not  
14 because I thought the city was saying, yep, we understand  
15 post-petition there's a lot of attorney -- you know, there's  
16 a lot of privileged --

17 THE COURT: What do you think about that, Mr.  
18 Stewart?

19 MR. STEWART: I think this is one of those where  
20 instead of -- given the history of our argument here today,  
21 it may well be that post-petition there's a putative  
22 protection to privilege on most things, and I'd suggest  
23 Mr. Hackney and I talk it through. I've tried to be  
24 reasonable on these. We don't want any more documents than  
25 we have to read, and we should be able to resolve it, and if



1 we can't, we'll come back to your Honor.

2 THE COURT: All right. It feels like it should  
3 apply. All right. Who did I give the next slot to?

4 MR. ANGELOV: May I have just one question, your  
5 Honor?

6 THE COURT: Yes.

7 MR. ANGELOV: Mark Angelov for Ambac Assurance. We  
8 actually had an agreement with the city that the city would  
9 not seek a privilege log, and this was communicated between  
10 us and also documented in our objections and responses. And  
11 I was just wondering if the Court would amend its order to  
12 comply with that agreement.

13 THE COURT: Is that your agreement?

14 MR. STEWART: It's fine. No privilege log is fine.

15 MR. ANGELOV: Thank you.

16 THE COURT: You're all set, sir. All right. Who  
17 did I give the next slot to? We're talking about requests by  
18 creditors for information from the city that the city has not  
19 complied with or has objected to.

20 MS. O'GORMAN: I know I had the second slot, but I  
21 didn't know if that was the second slot in -- your Honor,  
22 Debra O'Gorman --

23 THE COURT: Go ahead.

24 MS. O'GORMAN: -- again, counsel for Macomb County  
25 by and through its public works commissioner. If I might

1 hand up the list of objections to your Honor.

2 THE COURT: Please. Does the city have that, too?

3 MS. O'GORMAN: Yes, it does.

4 THE COURT: Okay.

5 MS. O'GORMAN: If your Honor could please disregard  
6 the first item on that list. That was resolved today --

7 THE COURT: Okay.

8 MS. O'GORMAN: -- as a result of your order on the  
9 privilege log. The second objection that we've raised is to  
10 the time period that the city has applied to its production,  
11 and based on your order that the production will now go back  
12 to 2012, there are just two requests for production of Macomb  
13 that we would like the city to go back beyond 2012. That's  
14 request four, which seeks financial results of the DWSD from  
15 2009 forward, and request 48, which seeks information on the  
16 retail customers of the DWSD from 2009 forward.

17 THE COURT: What specific information regarding the  
18 customers?

19 MS. O'GORMAN: We are just asking for information as  
20 to the identity of retail customers, customers in similar  
21 situations to Macomb and the other counties.

22 THE COURT: Like who?

23 MS. O'GORMAN: Other --

24 THE COURT: I don't know the phraseology "retail  
25 customer."

1 MS. O'GORMAN: People other than individual  
2 consumers, so any --

3 THE COURT: Like businesses you mean?

4 MS. O'GORMAN: No. We mean other agencies or  
5 authorities, counties, cities.

6 MR. BRILLIANT: Maybe I can help, your Honor.

7 THE COURT: Okay.

8 MR. BRILLIANT: We're not asking for the names, but  
9 we're -- your Honor, there's an issue. As your Honor knows,  
10 the number of citizens in Detroit has diminished. Macomb  
11 provides wholesale services. You know, the Macomb County  
12 public works agency, you know, takes service from the city,  
13 and then we, you know, sell it to the other municipalities in  
14 Macomb County. The city itself, though, is a city. It's not  
15 a county. So its customers are actually retail customers.  
16 They're individuals. They're businesses. And we had asked  
17 for information regarding, you know, the amount and number of  
18 the, you know, particular --

19 THE COURT: Okay. Okay.

20 MR. BRILLIANT: -- because it has to do with the  
21 financial projections, so we --

22 THE COURT: And going back now how far? What did  
23 you say?

24 MR. BRILLIANT: I believe four years.

25 MS. O'GORMAN: 2009.

1 MR. BRILLIANT: 2009, your Honor, five years.

2 THE COURT: All right. What's the city's position  
3 regarding this?

4 MS. LENNOX: Good afternoon, your Honor. Heather  
5 Lennox on behalf of the city with respect to this. With  
6 respect to the financial records of the system, I would note  
7 that DWSD posts its audited financials back to 2010 on its  
8 website, so they're publicly available. 2013 is unaudited  
9 and is not yet available on the website, but that's the  
10 information that we put in the disclosure statement, so I  
11 think that is a sufficient response.

12 THE COURT: Is 2009 available?

13 MS. LENNOX: I would have to check, your Honor, and  
14 I'm not sure since I don't --

15 THE COURT: All right. If it is, I'll order it. If  
16 it's not, it's not.

17 MS. LENNOX: Okay. And with respect to the retail  
18 customers, what a retail customer in the City of Detroit  
19 means is every single person we deliver water and sewer  
20 services to. These are individuals. These are individual  
21 businesses. I can't for the life of me --

22 THE COURT: I think they just wanted a count.

23 MS. LENNOX: -- understand the relevance of this.  
24 Well, if they want a count, I can give them a count, but I  
25 think what they're talking about are customer agreements and

1 who they are and --

2 THE COURT: Oh, I didn't hear that. Ma'am --

3 MS. LENNOX: Am I mistaken?

4 MS. O'GORMAN: Request 48 asks for documents  
5 regarding the number of retail customers for the fiscal years  
6 2009 through 2013 and projections for fiscal years 2014 to  
7 2003, so the number --

8 THE COURT: Yeah. So it's just like a census.

9 MS. O'GORMAN: Correct.

10 THE COURT: Any objection to that?

11 MS. LENNOX: I have no objection to that, your  
12 Honor.

13 THE COURT: All right.

14 MS. O'GORMAN: And with respect to request four,  
15 which seeks the financial information going back, it's not  
16 just the financial statements that we're looking for. We're  
17 asking for documents relating to DWSD's financial --  
18 historical financial results, including the financial  
19 statements, balance sheets, cash flows, and so forth, so  
20 there's a, you know, list of financial information.

21 THE COURT: Did you see what's on the publicly  
22 available website to see if that meets your needs or not?

23 MS. O'GORMAN: I'm certain that all of these aren't,  
24 you know, but this was a matter that Mr. Irwin and I were in  
25 the midst of meet and confer discussions, but we never got

1 the opportunity to fully discuss what the city was willing to  
2 produce back to 2009, what they were going to produce in the  
3 future, what was in the production, so, you know, this may  
4 be --

5 THE COURT: So what are the documents you want?

6 MS. O'GORMAN: We're looking for audited financial  
7 statements, pro forma and actual --

8 THE COURT: All right. That's on line. What's pro  
9 forma? What does that mean?

10 MS. O'GORMAN: Would be the -- my understanding is  
11 that it would be the sort of drafts and --

12 THE COURT: You want drafts of financial statements?

13 MS. O'GORMAN: Of balance sheets.

14 THE COURT: Drafts of balance sheets, not --

15 MS. O'GORMAN: Pro forma and actual balance sheets,  
16 cash flow statements, auditors' reports.

17 THE COURT: All right. All I'm hearing in addition  
18 so far are cash flow statements and balance sheets.

19 MS. O'GORMAN: Okay. We're also asking for  
20 documents showing historical volumetric use, revenue, and  
21 rate tariff by customer rate class and geographic service  
22 area.

23 THE COURT: Is that available?

24 MS. O'GORMAN: The important thing is, your Honor,  
25 that the city has agreed to produce all of the documents

1 we've requested in request number four with the exception of  
2 the date limiter that they applied, so they're not objecting  
3 to these types of documents. They're simply only --

4 THE COURT: Yeah.

5 MS. O'GORMAN: -- willing to go back to 2013.

6 THE COURT: All right. Well, if you have them, I  
7 think you should produce them going back to 2009. If you  
8 don't, you don't.

9 MS. LENNOX: Your Honor, I think everything she  
10 asked for in financial statements she'll find on line, and we  
11 said we'd look for 2009, so we will. We also produced a  
12 document to them about historic volumetric use. It's at  
13 Bates Number 216883.

14 THE COURT: Going back to 2009?

15 MS. LENNOX: I don't know if it's back to 2009, but  
16 it's historic, so I can confirm, your Honor.

17 THE COURT: All right. Anything else?

18 MS. O'GORMAN: Yes, your Honor. The most -- there's  
19 two very significant issues that Macomb would like the Court  
20 to address with respect to the city's production. One is an  
21 objection that the city interposed to a number of specific  
22 requests, about a dozen specific requests, all of which  
23 related to the DWSD, and that objection states that the city  
24 objects to this document request as overbroad insofar as it  
25 seeks documents relating to the GWA, the GLWA, or the DWSD

1 transaction or related bonds or financing as neither of them  
2 is currently contemplated by the plan or disclosure  
3 statement. Accordingly, this request is not reasonably  
4 calculated to lead to the discovery of admissible evidence.  
5 So essentially the city has deemed these issues to be  
6 completely irrelevant at this point and is refusing to  
7 produce any documents related to the potential creation of  
8 the water authority or what was defined as the DWSD  
9 transaction, which was, you know, that --

10 THE COURT: And what's the problem with that?

11 MS. O'GORMAN: Well, the problem with that is that,  
12 first of all, the city has included numerous requests for  
13 this very information in its request for production on the  
14 counties, and at no time did the city ever say, "Hey, forget  
15 about that. We're not interested in that anymore. We don't  
16 deem that relevant," so for the city to make requests for  
17 production and then tell us the essentially identical  
18 requests are irrelevant is, you know, really inappropriate.  
19 But more importantly, the -- this information is clearly  
20 relevant to the plan that's under consideration. As you  
21 reminded us earlier, the city has the burden of proof on that  
22 plan. The city has the burden to show that the plan is in  
23 the best interest of the creditors and that it's feasible.  
24 THE COURT: Give me an example of a document that  
25 the city has asserted this objection to.



1 MS. O'GORMAN: Okay. Well, here's one, and it's a  
2 little bit hard for us to determine exactly what the city is  
3 leaving out of its production.

4 THE COURT: Okay. But that wasn't my question. My  
5 question was what is your request?

6 MS. O'GORMAN: Our request number seven of the city  
7 is all documents showing financial projections related to the  
8 regional authority prepared by DWSD management, the city, the  
9 emergency --

10 THE COURT: When you say "the regional authority,"  
11 what are you referring to?

12 MS. O'GORMAN: The Great Lakes regional authority  
13 that was under consideration and is still -- you know,  
14 potentially could come back in as part of the plan.

15 THE COURT: Okay. But it's not in the plan now?

16 MS. O'GORMAN: Correct; correct, but --

17 THE COURT: So how is it relevant?

18 MS. O'GORMAN: Because when that plan was under --  
19 when the regional authority was under consideration,  
20 obviously the city did work to examine the financial  
21 viability of that regional authority, the financial  
22 projections that would result in that regional authority, the  
23 amount of capital improvements that would be needed, the  
24 effect of rates and pension obligations.

25 THE COURT: I assume all that is true, but why is it

1 relevant to this plan?

2 MS. O'GORMAN: Because what the city considered with  
3 respect to the regional authority would still be relevant  
4 today.

5 THE COURT: Why?

6 MS. O'GORMAN: Because those projections might still  
7 tell us how the city looked at an issue, how -- are they  
8 consistent with the projections that we're seeing today?

9 THE COURT: Ms. Lennox. Sir, do you want to be  
10 heard on this?

11 MR. NEAL: Your Honor, if I may. It overlaps with  
12 an issue that I was going to raise following Macomb. Guy  
13 Neal, Sidley Austin, for National Public Finance Guarantee.  
14 We made very similar requests for documents. Recall, your  
15 Honor, the deadline to send the request for production  
16 predated several versions of the plan, so things have changed  
17 and definitions have changed. We asked for documents  
18 relating to the DWSD transaction as defined in the plan and  
19 the GLWA, but we broadened that definition to include any  
20 consideration of the transfer of assets or functions of the  
21 water or sewer authorities. We know that the city has a  
22 request for information outstanding seeking to -- a possible  
23 privatization of its management, and it is pursuing that --

24 THE COURT: Okay. But that's a different question  
25 than Macomb is raising.

1 MR. NEAL: Macomb is looking for documents as it  
2 relates to the city's desire to essentially monetize --

3 THE COURT: I have a sense that your presentation is  
4 making this consideration of Macomb's request more complex,  
5 not less complex, so let me ask you to stand down, and --

6 MR. NEAL: I will stand down.

7 THE COURT: -- I will deal with yours.

8 MR. NEAL: I will stand down. Thank you.

9 MS. QUADROZZI: Your Honor, if I may, Jaye Quadrozzi  
10 on behalf of Oakland County. Oakland County's requests are  
11 very, very similar, if not identical, to Macomb County's.

12 THE COURT: Um-hmm.

13 MS. QUADROZZI: So if I may on this particular  
14 point, Oakland County had two issues with respect to  
15 objections raised by the city. The first one is the one that  
16 was raised by Macomb, and your Honor asked the question how,  
17 since it is no longer in the plan, could a request --

18 THE COURT: Right.

19 MS. QUADROZZI: -- relating be relevant, and my  
20 answer to that is this. During the time period that the  
21 regional authority was being put forth in the plan as a  
22 possibility, there were financial analyses that basically  
23 said there is enough money in DWSD to allow some entities to  
24 take \$47 million a year out by way of a lease payment and to  
25 pay it back to the city to monetize. How that's relevant is

1 because we are currently looking at objections to the plan  
2 talking about the feasibility, the ability of DWSD in the  
3 current formation to continue to provide the services that it  
4 provides. And if, in fact, the city has analyses that show  
5 DWSD is so flush that it has this extra \$47 million a year  
6 that is available to it, that is relevant or could lead to  
7 relevant information in connection with our objections  
8 about --

9 THE COURT: You're asserting that the city has an  
10 analysis showing that the department has \$47 million extra a  
11 year?

12 MS. QUADROZZI: That is the transaction that was  
13 under discussion in --

14 THE COURT: I thought the transaction that was under  
15 discussion was not that the DWSD had \$47 million a year. It  
16 was that the counties would pay that to the city.

17 MS. QUADROZZI: That the counties would pay that to  
18 the city and that it would have no effect on rates and that  
19 the amount would be able to be drawn from increased savings  
20 that DWSD would now have as a result of an improved bond  
21 rating that the new authority would have as well as reduced  
22 costs by way of operational efficiencies that have been  
23 gained. That was where the money was supposed to come from.  
24 And if they have, in fact, those analyses --

25 THE COURT: And that's relevant to what's before the

1 Court today how?

2 MS. QUADROZZI: It's relevant because the financial  
3 stability of DWSD going forward is very relevant to determine  
4 whether or not, in fact, it can continue to perform under the  
5 contracts that it has with the counties, certainly Oakland  
6 County. If they believe that there is that much excess money  
7 within the system, if it existed, we think that it is  
8 relevant to our analysis. It certainly is likely to lead to  
9 the discovery of relevant information, which is the  
10 threshold.

11 THE COURT: Ms. Lennox.

12 MS. LENNOX: Couple of things with respect to this,  
13 your Honor. First, it sounds like what Macomb and Oakland  
14 are arguing are they're making arguments trying to dispute  
15 whether the authority is a good idea or not, and I don't  
16 think that's relevant for our plan because, as your Honor  
17 pointed out, the plan, as drafted, does not contain an  
18 authority. The plan, as drafted, indicates that DWSD is  
19 going to remain a department of the city, and it provides  
20 financial information for DWSD remaining a department of the  
21 city and projections for DWSD going forward as Exhibits L and  
22 M to the disclosure statement, and we've already discussed  
23 that historical financial information for DWSD standing on  
24 its own is on its website. So I think this is wholly  
25 irrelevant. Nevertheless, I also find it odd coming from

1 Macomb and Oakland, who are the parties in the room  
2 negotiating the authority with us, and all this information  
3 was provided to them during those negotiations.  
4 Nevertheless, as a part of the production, we did produce  
5 two -- and we shared this already with all creditors,  
6 including Mr. Neal's clients. When we were originally  
7 thinking about an authority back in the fall of 2013, there  
8 were three very big decks that the advisors and DWSD produced  
9 with respect to a potential authority transaction, and those,  
10 indeed, have been produced. They were produced before as  
11 well notwithstanding the fact that this is not part of the  
12 plan and is not relevant. So I think, your Honor, that  
13 anything related to this authority which is not part of our  
14 plan and which we don't have to prove up -- we have to prove  
15 up that the plan, as drafted, is feasible. The plan, as  
16 drafted, includes DWSD remaining a department of the city,  
17 and separate financials with respect to DWSD have been  
18 provided so that the creditors and the people that we deal  
19 with with respect to that department can understand it  
20 separately from the rest of the general fund. So I think any  
21 further search and production on this is wholly irrelevant to  
22 the plan that's before the Court.

23 THE COURT: How do you deal with the argument that  
24 whatever financial analyses were prepared then in support of  
25 that proposed transaction bear upon whatever forecasts and

1 projections the city has made in connection with this plan?

2 MS. LENNOX: I think there -- I think you're talking  
3 apples and oranges, your Honor. One of the reasons we  
4 thought that it might be a good idea to do an authority with  
5 the three counties and remove this -- these operations from  
6 parts of the city are to do things like improve credit  
7 ratings, have a different form of management, have a  
8 different form of governance. None of that is relevant to  
9 what we're doing in the plan. And so while the operating  
10 financials probably aren't going to change very much, it's  
11 those atmospherics and those potential credit rating  
12 decisions that may change with an authority, but that's not  
13 part of our plan. That's not what we have to prove to the  
14 Court in a few months. So, again, I understand why people  
15 are highly interested in this because it was being discussed,  
16 but it's not being discussed now. Something may happen with  
17 mediation, which, as I understand, is just getting off the  
18 ground, and maybe it won't, but we're dealing in discovery  
19 with the plan that's before the Court for confirmation. If  
20 things change, then people will have a right to ask questions  
21 about how things have changed in the future.

22 MS. O'GORMAN: Just one more thing briefly on this  
23 point, your Honor. We do feel that we should have a right to  
24 look at the documents related to the regional authority, test  
25 and see how projections have changed, if at all, and, you

1 know, make that determination.

2 THE COURT: Ms. Lennox represented that the city had  
3 provided your clients with information about the financials  
4 in support of the authority from back in 2013 or whenever it  
5 was proposed the first time and discussed. Is that not true?

6 MS. O'GORMAN: I don't doubt that that's the case,  
7 but it's documents from the city that we wouldn't otherwise  
8 have that we're looking for, and with --

9 THE COURT: Like what?

10 MS. O'GORMAN: I would have no way of knowing what  
11 that would be, but there's a wholesale refusal based on  
12 relevance to produce anything on the regional authority, and  
13 the city didn't address the fact that they asked for  
14 documents on this very issue of the counties and possibly  
15 other parties.

16 THE COURT: All right. The Court must conclude that  
17 this documentation that the counties seek is of arguable  
18 relevance. Accordingly, the Court will require the city to  
19 produce it.

20 MS. O'GORMAN: Thank you, your Honor. And there's  
21 one final issue that Macomb would like to raise, and that is  
22 with respect to --

23 THE COURT: And I should say as to both Oakland and  
24 Macomb Counties. Go ahead. I'm sorry.

25 MS. O'GORMAN: That is with respect to the objection



1 interposed by the city to request for production 12, which  
2 seeks all documents relating to the RFI's, including but not  
3 limited to, and then we're asking for information on the  
4 responses received from potential private operators,  
5 documents relating to meetings or negotiations with those  
6 parties, documents sent or received by the potential private  
7 operators, and any memorandum shared with those private  
8 operators. The city interposed an objection that to the  
9 extent it requires the production of documents containing  
10 commercially sensitive information, they will not be  
11 produced. And in initial meet and confer discussions with  
12 Mr. Irwin last Thursday and Friday, he indicated that he  
13 wasn't sure what documents, if any, would have been withheld  
14 on the basis that they contain commercially sensitive  
15 information. I learned yesterday afternoon from Mr. Irwin  
16 that the city did, in fact, withhold documents. Mr. Irwin  
17 told me that, "I was reminded by my team that the city  
18 withheld documents relating to Miller Buckfire's current  
19 efforts to find a buyer/operator for the DWSD on the basis of  
20 commercial sensitivity." And, your Honor, while those  
21 documents may be sensitive, that doesn't, as you said before,  
22 absolve the city of the obligation to produce them if they're  
23 otherwise relevant. The remedy would, of course, be a  
24 protective order, and we would certainly be willing to  
25 discuss that with the city and the appropriate terms,

1 consider an attorneys' eyes only protective order subject to  
2 coming back to the Court should the need arise, but it is  
3 just not appropriate to refuse to produce that information.

4 MS. LENNOX: Your Honor, we have disclosed in the  
5 disclosure statement that we have put out an RFI -- that RFI  
6 has been produced to all of the creditors -- with respect to  
7 a potential public-private partnership or some third-party  
8 privatization of DWSD. We have also disclosed in the  
9 disclosure statement the status of that process, and the  
10 status of that process is we're in the middle of it. We are  
11 in the middle of a potential sale process, and we are trying  
12 to get a few parties to submit some definitive bids by June  
13 1st of this year. The ongoing process and the discussions  
14 with potential parties -- third parties are fluid, and they  
15 are commercially sensitive. This is like any other sort  
16 of -- if you liken it to an asset sale process, it would be  
17 appropriate to let the creditor parties know the outcome of  
18 the process, but it would also be highly disruptive to the  
19 process when you're in the middle of it and talking about  
20 things with third parties, including where they may come out  
21 on things, where they may not come out on things. They're  
22 not going to want to share information with us, and they are  
23 not going to want to continue with their dialogue with us if  
24 they think that all the communications for a bid they may or  
25 may not ever submit are going to be subject to creditor

1 review and creditor interference in a discovery process. It  
2 would definitely chill this process and definitely chill the  
3 potential of ever getting a transaction like this done, so we  
4 do think this is commercially sensitive. I would also point  
5 out that even under the FOIA rules under MCL 15.243(1) sub  
6 (i) none of this would be discoverable until the bids or --  
7 the time for submitting bids or proposals have expired at the  
8 end of June, so, again, I think it's perfectly appropriate to  
9 let the creditors know how this process comes out, but I  
10 think it's absolutely inappropriate and would disrupt it and,  
11 in fact, chill the process if we were required to produce  
12 discovery to litigating creditors in the middle of an ongoing  
13 process.

14 THE COURT: I agree with the city's position on  
15 this. Their objection is sustained. It's time for us to  
16 take a recess, so we'll be in recess until four o'clock,  
17 please.

18 THE CLERK: All rise. Court is in recess.

19 (Recess at 3:43 p.m., until 4:00 p.m.)

20 THE CLERK: All rise. Court is in session. Please  
21 be seated. Recalling Case Number 13-53846, City of Detroit,  
22 Michigan.

23 MR. IRWIN: Geoff Irwin, your Honor, Jones Day, for  
24 the city. Just may I request a clarification revisiting some  
25 of the issues we dealt with this morning? I was conferring

1 with Mr. Hackney during the break, and we were discussing a  
2 few things. I want to make sure I understand my obligations  
3 with regard to some of the rulings this morning. I think  
4 most of them are straightforward enough I understand them.

5 THE COURT: Okay.

6 MR. IRWIN: Within several days I will be  
7 reproducing the city's document production. That I  
8 understand. By Monday of next week I will be delivering a  
9 declaration that sets out the procedures and the search  
10 protocols, things like that, and the index that we can put  
11 together to allow someone to navigate the city's production.  
12 That I understand. The Court made reference to the date  
13 restriction or the date fields that were used on the search.

14 THE COURT: Yes.

15 MR. IRWIN: The clarification would be helpful for  
16 me in connection with what the city is expected to do with  
17 regard to searching earlier in time. If the order or the  
18 expectation is that the city also go back and rerun its  
19 search, the ESI search -- again, the --

20 THE COURT: Yes.

21 MR. IRWIN: -- dipping the toe in the pool, across  
22 all of its 88 custodians or so and redo this from January  
23 1st, 2012, through the end of 2012 to supplement the  
24 production, if that's -- I would ask clarification as to  
25 whether or not that is the order. If it is -- and I think

1 that would be tremendously burdensome on the city to do -- it  
2 would certainly take time. That is not something that I was  
3 representing to the Court that we could do by Monday with  
4 everything else. If we've got all of our discovery team  
5 resources doing the very best we can to make sure this doc  
6 reproduction is what it needs to be, which has to immediately  
7 turn around into building this index and making this  
8 declaration right for the parties for Monday, I don't have  
9 the resources or it would be very difficult to marshal the  
10 resources and incredibly expensive to go back and also rerun  
11 searches on a new time period. If we have to do it, we'll do  
12 it, but that is not something we could do for Monday.

13 THE COURT: How long would that take?

14 MR. IRWIN: I honestly do not know. I don't know if  
15 we have the data that's been -- I would like to think but I  
16 really don't know if the data that we've collected and run  
17 our original searches against is the complete set of data and  
18 we would just run a search again, but that takes time. It  
19 takes time to run the searches. It takes time to load the  
20 data on computers. It takes time for folks to review it.  
21 And, again, I just -- I feel like we wouldn't have a quick  
22 start to that because of everything that's --

23 THE COURT: Well, I will ask you or whichever of  
24 your colleagues will be here on Thursday to make a report to  
25 me on how long that will take.

1 MR. IRWIN: Okay. Yes, your Honor. We can do that.

2 THE COURT: All right. Who's next?

3 MR. BRILLIANT: Your Honor, Allan Brilliant, you  
4 know, again on behalf of the Macomb County public works  
5 commissioner. You know, I have good news, your Honor. Mr.  
6 Schapka came back from the second floor, met with Ms. Lennox,  
7 and we believe that this issue is resolved at least for --  
8 you know, for today --

9 THE COURT: Okay.

10 MR. BRILLIANT: -- subject to further discussion, so  
11 with that there will be no need to put that back on --

12 THE COURT: Thank you.

13 MR. BRILLIANT: -- the calendar for today.

14 THE COURT: Okay.

15 MR. NEAL: Okay. Good afternoon again. Guy Neal  
16 for National Public Finance Guarantee. I rise to address the  
17 statement of unresolved issues that we filed on Friday  
18 afternoon. We filed that on behalf of National, Assured,  
19 Berkshire Hathaway Assurance Corporation, U.S. Bank National  
20 Association, and the ad hoc committee for the DWSD  
21 bondholders. The good news is, as it relates to the  
22 documents, I think we can confirm very quickly that those  
23 issues have been resolved based on prior rulings today. We  
24 raised three in our brief. If I could quickly go over  
25 them --

1 THE COURT: Um-hmm.

2 MR. NEAL: The first one is the easiest. That  
3 concerns the city's bulk document production. That has been  
4 addressed. The second one concerns the date, reach-back  
5 period of January 1, 2013. That has been addressed, I  
6 believe, in part, although I'd like confirmation. We just  
7 heard of the colloquy as it relates to going back to January  
8 1, 2012. I understand that. The DWSD parties also sought  
9 specific documents going back to 2009. We cited examples in  
10 our submission on page 5. Just to pull some of them out for  
11 you, your Honor, we sought all financial statements and  
12 supporting schedules going back to 2009. I believe you  
13 addressed that in your ruling as it relates to Macomb's issue  
14 earlier today. If they exist, the city will produce them.  
15 We also requested information going back to 2009 as it  
16 relates to calculation of pension and OPEB benefits  
17 specifically as they relate to the DWSD employees. I assume,  
18 again, to the -- should not assume anything. To the extent  
19 that information exists, I believe the city should produce  
20 it. I have a high degree of confidence that they have that  
21 information. It's not something that they would have to  
22 create or go through great searches for given all the pension  
23 and OPEB issues in this case. So that's my issue number two  
24 on the documents.

25 My issue number three on the documents, I believe,

1 was just addressed, and I apologize to the extent I tried to  
2 confuse matters when I rose earlier. And that concerns  
3 objections as to the DWSD transaction, which is a defined  
4 term in the plan, back in the day, or the GLWA. As I rose to  
5 state 15, 20 minutes ago, we included a definition that we  
6 would like any documents that relate to any transfer of the  
7 assets or functions of DWSD. We heard a couple things. One,  
8 the request for information about a private-public  
9 partnership or a private management agreement. That process  
10 is ongoing. We should be able to obtain those documents that  
11 exist today and that may be produced during the course of  
12 this process. Also, one point that was not raised that I do  
13 wish to underscore, and that is less than a month ago I  
14 believe your Honor said it would be a shame more or less to  
15 waste a perfectly good bankruptcy and not pursue potential  
16 for an authority, and the parties, as we understand it, are  
17 in mediation today and ongoing mediation on that issue.  
18 Should that resurface and should that resurface late, your  
19 Honor, we should get those documents such that we don't have  
20 to start this process over again. Again, based on your  
21 ruling with respect to Macomb's issue, you said there was  
22 possible relevance to this material. You ordered they be  
23 produced, so I think, again, we are covered there. So that's  
24 it for the documents. Now I want to turn to the  
25 interrogatories, your Honor.



1           THE COURT: Well, let me deal with that much of it  
2 at this point.

3           MR. NEAL: Very good.

4           MS. LENNOX: Thank you, your Honor. We did discuss  
5 the financials. I note that the financials back to 2010 are  
6 on line, and the parties can pull them. We will look for --  
7 or 2010. We will look for 2009.

8           THE COURT: Okay.

9           MS. LENNOX: With respect to the other request that  
10 goes back to 2009, the pension and OPEB benefits, we can go  
11 back that far. In fact, I note that on page 92 of the  
12 disclosure statement we list the pension contributions from  
13 2009 to 2013, so we already disclosed them, so we can go back  
14 for those limited items that far as well, and I think the  
15 rest is otherwise resolved by your Honor's rulings.

16          THE COURT: Okay. Interrogatories?

17          MR. NEAL: Before I turn to the interrogatories, I  
18 pulled out pension and OPEB as one of the examples of the  
19 requests that go back to '09. The debtor did state that they  
20 would produce the information we requested on issues --  
21 financial issues, in particular, going back to '09. I just  
22 don't want to limit when I stand up here today, and say,  
23 well, it's just pension and OPEB. It goes beyond that. We  
24 had enumerated several requests in our statement of  
25 unresolved issues, numerous document requests that do call

1 for information that go back to '09 and some that potentially  
2 go back to '09, so I -- the city perhaps --

3 THE COURT: Well, to the extent it's available, it  
4 should be turned over.

5 MR. NEAL: Very good. Thank you. All right.  
6 Turning to the interrogatories, your Honor, this is page 9 of  
7 our submission. I understand the general reluctance to  
8 prepare responsive interrogatories. It takes hard work, and  
9 it takes precision. We prepared a chart that we appended as  
10 Exhibit E to our statement of unresolved issues. I do not  
11 have any intention to go through it. It's not the Syncora-  
12 sized phone book chart, your Honor. It's much more narrower,  
13 not to --

14 MR. HACKNEY: Obviously jealous.

15 MR. NEAL: We tried to limit -- although we found  
16 many of the responses to be completely nonresponsive or  
17 incomplete, we're going to try to narrow this to six broad  
18 categories as listed on page 9, and I just intend to go  
19 through them, your Honor. Interrogatory Number 1 --

20 THE COURT: One second, please.

21 MR. NEAL: Yes.

22 THE COURT: All right. Can you give me the docket  
23 number of what you are looking at?

24 MR. NEAL: Yes, your Honor. I have an extra copy  
25 should your Honor want it. This is Document Number 4568,

1 page 9 of 45 --

2 THE COURT: Actually, if you have a copy there, that  
3 would be even more convenient. Okay.

4 MR. NEAL: May I approach, your Honor?

5 THE COURT: Yes, please. Okay.

6 MR. NEAL: For ease of reference -- for ease of your  
7 Honor's reference, I handed you a copy of the statement  
8 itself and only Exhibit E. Exhibit E is the chart of all the  
9 interrogatories. Again, I'm not going to walk you through  
10 all of the interrogatories, but if you turn to page 9 of the  
11 statement itself, Interrogatory Number 1, we asked for the  
12 financial and accounting basis for the DWSD funding of the  
13 GRS, UAAL. Let me put that in plain English. As your Honor  
14 may note from the plan, the city proposes that the DWSD pay  
15 approximately \$428.5 million over the course of nine years  
16 for its what the city claims to be the DWSD's unfunded  
17 actuarial liability, so that's 428 million coming out of the  
18 system, and arguably it's coming out on top of the debt  
19 service payments as to which my clients insure. The city  
20 essentially punted on this response, didn't provide a  
21 complete answer, and the default mode for the city on  
22 questions related to the plan is to direct parties to the  
23 plan and the financial projections in the plan. They do not  
24 provide a narrative response. Same as it relates to  
25 Interrogatory Number 2, the methodology and supporting

1 assumptions for projections of the city's pension  
2 contributions. Again, this directly impacts my client, which  
3 insures about 1.8 billion with a "B" dollars worth of water  
4 and sewer bonds, also impacts, of course, the other parties  
5 that I am standing up here today for the DWSD parties.  
6 Again, lack of a narrative direction to the plan and  
7 disclosure statement.

8           Then there are about five interrogatories, 5 through  
9 10, that go back to the DWSD transaction of the GLWA.  
10 Recognizing those are off the table, there, nonetheless, is  
11 this qualified -- it's a new defined term in the latest  
12 version of the plan -- a qualified DWSD transaction, which by  
13 and large is the optionality of the city to pursue lease,  
14 sale or other disposition of the systems, perhaps private  
15 management company. We are looking for information relating  
16 to that transaction. If the GLWA and the DWSD transaction  
17 are off the table, this other qualified transaction appears  
18 to be on the table as well as the request for information  
19 that they have circulated and is still outstanding.

20           The last three, your Honor, I'll go over them  
21 quickly. Interrogatory 13, the methodology, basis, and  
22 justification for the city's interest rate reset chart. Your  
23 Honor, what the city proposes to do -- and you'll see it  
24 clearly in our objection to be filed tonight -- is to lower  
25 the interest rate on a series of these bonds, not all of

1     them, but to impair the DWSD bondholders by lowering interest  
2     rates to what they perceive to be the market rate, the market  
3     rate of the bonds for the city upon its emergence from  
4     Chapter 9. We asked them to provide, in essence, kind of the  
5     facts or data. This would probably be an expert witness  
6     issue, no doubt, but, again, the facts or data supporting  
7     that justification should be explained in this interrogatory.

8             Number 14, the city is also proposing to impair the  
9     bonds by stripping the bonds of their call protection and  
10    call protection premium. We asked them for a narrative  
11    response as to the value and the risks associated with  
12    removing those call protections.

13            And lastly, your Honor, saving the easiest one for  
14    last, is Interrogatory 21, which asked them specifically --  
15    this has kind of been a recurring theme throughout the day --  
16    please identify the persons on your witness list who may  
17    testify with respect to DWSD matters. At present, there is  
18    no such identification. There are 30 to 33 witnesses so  
19    identified. And with all due respect to Mr. Hackney,  
20    Mr. Marriott, and others, we have limited, if any, interest  
21    in matters involving the DIA, the grand bargain, et cetera,  
22    but we would like to know which witnesses the city may call  
23    to testify as to DWSD. So with that I'll turn the podium  
24    over to Ms. Lennox.

25            MS. LENNOX: Okay, your Honor. Why don't we take

1 these one by one? And I'm going to focus on the ones that  
2 Mr. Neal focused you on. The first one is Number 1. And if  
3 you read the request, which takes up a full page, of what  
4 they want us to respond to via interrogatory, I will state  
5 that we produced -- first of all, let me make this clear  
6 because it's not clear to everybody in this case, and it took  
7 some of the retirees' groups a little bit longer to  
8 understand this. The city is not the Retirement Systems.  
9 The city doesn't calculate pension contributions. The city  
10 doesn't calculate who owes what. The city doesn't calculate  
11 the allocation between the general fund and DWSD. That's all  
12 done by the general retirement system. So the city may have  
13 some documents in its possession because it has those  
14 documents or they're available on line, but they are not city  
15 documents, per se. So with that clarification, we did  
16 produce to the other side the GRS financials and valuations  
17 that we did have. I would also point out to them that if  
18 they go to the GRS website, they will find them on the  
19 website as well. And those -- parts of those documents show  
20 the -- what the general retirement system allocates to --  
21 what portion of the UAAL the general retirement system  
22 allocates to DWSD, so those documents are what they are. The  
23 system calculated them. They can look at those.

24 We also, as I pointed out, on page 92 of the  
25 disclosure statement, set forth what DWSD's historical

1 contributions to the pension were going back to 2009. The  
2 remainder of this interrogatory -- so I think they can rely  
3 on the documents produced under Federal Rule 33(d) on that.  
4 The rest of it of what they want the basis for treating the  
5 amounts as operations and maintenance expenses under the DWSD  
6 bond documents, that calls for a legal argument that I think  
7 I'm going to see in their objection that they filed today,  
8 and interrogatories are inappropriate places to set forth  
9 legal arguments. And if they want to know whether the  
10 prefunding -- what they're calling prefunding, what I'm  
11 calling a payment of a UAAL -- will impair the bonds, it  
12 doesn't. I'll just state that on the record. So I think we  
13 have done what we can do in terms of particularly with  
14 producing documents to respond to the concern that they have  
15 with respect to this particular interrogatory.

16           With respect to Number 2, again, what they're  
17 looking for here is an essay question. It's describe with  
18 particularity the nature, derivation, and basis and  
19 methodology used and underlying support and assumptions for  
20 any of our projections for annual contributions to the GRS  
21 and PFRS. Again, these are not something that the city does.  
22 This is something that the Retirement Systems do. And to the  
23 extent that we had documents in our possession from the  
24 Retirement Systems -- and, again, I note they are all on  
25 line -- we produced them. Moreover, to the extent that

1 they're really looking for actuarial assumptions or something  
2 that is unclear to me from this from the city, that would be  
3 the subject of expert testimony and not an appropriate  
4 interrogatory question.

5           With respect to Number 5 through 10, I think Mr.  
6 Neal conceded that they have been dealt with in other  
7 portions of your Honor's colloquy with me this afternoon, but  
8 he does mention the new qualified DWSD transaction, which is  
9 a fancy way of saying if there is some DWSD transaction in  
10 the future, then, you know, here's how we would allocate  
11 whatever value comes out of that, so it is not a transaction  
12 that is currently on the table. It is not a transaction that  
13 we can answer for because it is purely a hypothetical. It is  
14 should the authority arise in the future, then maybe that  
15 could be a qualified DWSD transaction or if the RFI that  
16 we've had a colloquy over produces a third-party transaction,  
17 then that might arise in the future, so, again, I'm not sure  
18 what we can say about a qualified DWSD transaction other than  
19 one might occur, and when and if one does, we'll let you know  
20 about it.

21           So I think that takes us to Number 13. Whoops.  
22 Skip that one. And this goes to the interest rate reset  
23 chart, which is Exhibit I.A. 159 to the plan -- well, used to  
24 be Exhibit I.A. 159 to the plan, but it is still an exhibit  
25 to the plan. Again, with respect to this interest rate reset



1 chart and what we think the market rate interest rates of the  
2 DWSD bonds that are being impaired may be -- and, again, I  
3 remind your Honor that not all of them will be impaired -- we  
4 did in our production give them nonprivileged documents with  
5 respect to that, so I think they can look at the documents  
6 and come to their own conclusions. With respect to the rest  
7 of this, Mr. Neal correctly identified that he expects that  
8 this will be the subject of expert testimony, and it will, so  
9 we believe that to answer this any more specifically right  
10 now would be premature.

11 With respect to Interrogatory Number 14 where they  
12 ask for the value and risks associated with removing call  
13 protections from the bonds, I, frankly, don't understand what  
14 value and risks associated with removing call protections are  
15 because we don't view any risks to the city. What I think  
16 they're asking for, again, is expert testimony of how this is  
17 perceived in the market and/or they may be asking for a legal  
18 argument with respect to whether it's proper and can be done  
19 under applicable law to remove call protections from a  
20 document. Again, we viewed this as either looking for expert  
21 testimony or a legal analysis and does not lend itself to an  
22 appropriate interrogatory response other than the one that  
23 was provided.

24 And I think that takes us to Number 21, which is  
25 which of our witnesses may testify with respect to DWSD. As

1 DWSD, we view this as part of the feasibility analysis. I  
2 would say witnesses that are identified as testifying as to  
3 feasibility are potential DWSD witnesses. We can certainly  
4 go through our witness list and be a little more precise for  
5 Mr. Neal and his colleagues.

6 THE COURT: Thank you. Mr. Neal, anything further?

7 MR. NEAL: Very briefly. On 1 and 2, Ms. Lennox  
8 refers to the Retirement Systems and the retirement plans and  
9 it's their calculations, but it is the city's plan, and it is  
10 the city's projections, and they would have this information  
11 and could provide complete responses.

12 Otherwise, your Honor, as to what she deems to be  
13 either expert issues or premature, again, your Honor, facts  
14 or data considered, facts or data they have that would not be  
15 premature -- this goes to 13 and 14 -- should be provided.

16 Lastly, on 21 I'll accept her representation that  
17 those witnesses who are identified as feasibility experts --  
18 not feasibility experts -- excuse me -- designated as  
19 testifying as to issues regarding feasibility will also cover  
20 DWSD, but to the extent there are any others, we'll -- we  
21 want them in writing in the interrogatory. We also have a  
22 separate issue -- perhaps it's not for today; perhaps it's  
23 Thursday -- as it relates to the deposition notices that are  
24 outstanding and how we conduct that issue with 30(b)(6)  
25 representatives.

1 THE COURT: Okay.

2 MR. NEAL: But with that, your Honor, it's been a  
3 very long day, and I thank you for your patience.

4 THE COURT: Okay. Stand by, please. All right.  
5 With respect to the matters asserted by National Public  
6 Finance, Assured, Berkshire Hathaway and the others, the  
7 Court sustains the city's objections regarding  
8 Interrogatories 1, 2, 5 through 10, 13, and 14. The Court  
9 will require the city to provide a more complete answer or a  
10 fully complete answer as to Interrogatory 21.

11 MR. MONTGOMERY: Your Honor, if I may, just to knock  
12 something off your calendar, I spoke with counsel for Wayne  
13 County, and their objections to a response to discovery,  
14 which is Docket Number 4437, has been resolved through the  
15 meet and confer process, and their rolling production is  
16 underway, and so there are no issues between us.

17 THE COURT: Thank you.

18 MS. GREEN: We had a meet and confer on Friday, and  
19 I believed at that time that all of our issues --

20 THE COURT: Your appearance again, please.

21 MS. GREEN: Jennifer Green on behalf of the  
22 Retirement Systems. I'm sorry. We had a meet and confer,  
23 and I thought that all of our issues were resolved, but  
24 throughout the day today I've learned some new information  
25 that I think there may be an issue out there I'd like to

1 raise now to get it on everyone's radar. We had requested  
2 several documents relating to the DIA, including insurance  
3 policies, appraisals that may have been performed in  
4 connection with those insurance policies, copies of any  
5 instruments gifting or bequeathing, you know, artwork to the  
6 DIA, things of that nature. The response from the city was  
7 subject to our general objections, we'll produce what we have  
8 to you. And then today I heard Mr. Irwin say that they did  
9 not give, for instance, a list of all the artwork, and I'm  
10 concerned that several creditors have directly subpoenaed the  
11 DIA.

12 THE COURT: Um-hmm.

13 MS. GREEN: We did not based on the representation  
14 from the city at the art committee motion that we could  
15 direct our document requests to the city. I went back to the  
16 motion hearing transcript, and at that time Mr. Bennett  
17 stated that although -- "the city, although it is not  
18 actually the repository of data relating to the DIA or the  
19 city collection -- that's largely what I call the DIA Corp.,  
20 which is the entity that manages the museum -- we will  
21 cooperate with information requests that people have with  
22 respect to the art and with respect to issues relating to the  
23 art, period, end of story," end quote. That was from the  
24 22nd of January. So we did not directly subpoena the DIA,  
25 and I understand that several creditors did and that there is

1 a much larger production being compiled by the DIA that I do  
2 not have access to. While I would be okay with just going  
3 that route and getting the documents from the DIA, I now  
4 understand there's some sort of letter agreement between  
5 certain creditors and the DIA that we are not a part of as  
6 well as a pro rata share of some sort of cost associated with  
7 compiling the documents, and it's pretty high. It's like  
8 15,000 per party if I'm not mistaken. That's what I was  
9 given as a rough number today. To me that seems a little  
10 unfair like it's shifting the burden from the city, who had  
11 affirmatively represented to everyone that we could direct  
12 all of our requests to them, and now I have to go to a  
13 different party, and I have to pay 15,000 to get the  
14 documents that I have already requested from the city. I  
15 don't know if that's something that Mr. Irwin can deal with  
16 in his certification of who they got documents from and the  
17 index. I think it falls kind of outside of that. And I  
18 bring it to your attention. I can do it by motion, but since  
19 we're here today, I thought I would raise the issue. Thank  
20 you, your Honor.

21 THE COURT: Would either of you like to address  
22 this?

23 MR. IRWIN: I can address it briefly, your Honor.  
24 Ms. Green and I had not previously discussed this. I wasn't  
25 aware of this issue. I tried to articulate the city's

1 positions on many of these art requests earlier this morning,  
2 which is the city in receipt of the document request searched  
3 its own files and did, in fact, produce responsive documents  
4 but that -- and I've told anyone who has asked in our various  
5 meet and confer sessions that we expect and believe that the  
6 vast majority of documents and information that creditors are  
7 asking for is in the hands of the DIA, and as I understand  
8 and read the agreement in plain terms, they are getting that  
9 information from the DIA. I would be more than happy to work  
10 with Ms. Green in terms of how she can intersect with that  
11 process and benefit from the many, many documents that are  
12 being produced. And if she is not satisfied that she is  
13 getting those documents, I suppose we can revisit that at  
14 that time, but the city can't do any more than produce what  
15 it has.

16 THE COURT: Well, I don't think Ms. Green is  
17 concerned about that. I think she's concerned about having  
18 to write a check for \$15,000 after Mr. Bennett said that the  
19 city would cooperate with creditors in providing these  
20 documents.

21 MR. IRWIN: And that's what I meant when I said  
22 that's something I would be willing to work with Ms. Green  
23 about.

24 THE COURT: All right. Let me see if the two of you  
25 can work this out between now and Thursday without the

1 necessity of any formal process and report to me then.

2 MR. IRWIN: Yes, your Honor.

3 THE COURT: Who else would like to be heard today?  
4 Sir.

5 MR. ANGELOV: Your Honor, Mark Angelov for Ambac  
6 Assurance Corporation. I have one specific interrogatory  
7 response that I'd like to raise with the Court --

8 THE COURT: Okay.

9 MR. ANGELOV: -- and one general issue that I  
10 alluded to earlier. May I hand up something we --

11 THE COURT: Yes, please.

12 MR. ANGELOV: -- filed on the docket earlier?

13 THE COURT: Your Honor, this is in connection with  
14 Ambac's Interrogatory Number 11 to the city. This begins on  
15 page 4 of the document I handed up.

16 THE COURT: Okay.

17 MR. ANGELOV: Interrogatory 11 seeks -- asks the  
18 city to describe the amount and nature of the administrative  
19 claims referenced in the plan and disclosure statement. It  
20 also asks to identify all documents that relate to the  
21 administrative claims, and then there's a corresponding  
22 request for production that seeks the production of those  
23 documents. The city did not respond to the interrogatory.  
24 They generally reference the disclosure statement, which, of  
25 course, just gives a total amount of all administrative

1 claims. The basis for not responding is vagueness, which  
2 "administrative claims" is a term that's defined under the  
3 plan. It's not vague, nor is Ambac seeking information about  
4 all potential administrative claims as the response suggests.  
5 We're just asking for essentially a list of what is summed up  
6 in the disclosure statement and the corresponding documents,  
7 so that's Interrogatory 11.

8 The general issue that I raised earlier this morning  
9 with your Honor is the fact that we understood the city to be  
10 objecting to supplementing its document production going  
11 forward as additional documents become available.

12 THE COURT: Oh, yes. You did mention that. All  
13 right. Let's deal with that. Thank you, sir.

14 MR. IRWIN: Your Honor, we don't particularly see  
15 the relevance of the information requested in Interrogatory  
16 Number 11, but as Mr. Angelov has articulated it, if he wants  
17 that information, we think we can provide it.

18 THE COURT: Okay. What about the issue of the duty  
19 to supplement in the meantime?

20 MR. IRWIN: Boy, it's -- where do you sort of grab  
21 on that? I mean we have the same problem that we would  
22 encounter with regard to going back a year, we would have  
23 that going forward a year only this time we'd have to go out  
24 and re-retrieve the electronic records of all of our  
25 custodians. I just don't know how we would do that. If



1 there was some limited category of information in terms of  
2 new developments --

3 THE COURT: I like that idea. If creditors' counsel  
4 or really any counsel seek supplementation of specific  
5 documents, I would urge them to forward that information to  
6 Mr. Irwin right away, and we'll see if that becomes  
7 burdensome. I would hope that they would keep those  
8 categories as limited as possible.

9 On the subject of administrative expenses, I was  
10 actually going to bring this up on Thursday in our status  
11 conference. As I read through the plan, it wasn't clear to  
12 me whether the term "administrative expenses" included  
13 ordinary course of business expense, wage expenses. The  
14 language is broad enough to include all of that stuff, but it  
15 was incomprehensible to me that you actually intended that,  
16 so I was going to ask you what you did intend to mean by the  
17 phrase "administrative claims," and we can discuss that on  
18 Thursday. We don't need to do it today. And part of the  
19 agenda for Thursday will be a bunch of questions I have about  
20 the plan. These are not in the nature of objections because  
21 I don't object, but it is important, I think, for the plan to  
22 be as clear as we can make it to avoid issues, disputes, and  
23 potential litigation later, so when I ask these questions,  
24 it's not for the purpose of ruling on anything or suggesting  
25 an outcome. It's just for purposes of clarity. And someone

1 is going to have to explain to me and justify the usage in  
2 the plan on a gazillion occasions the phrase "and/or."

3 MR. ANGELOV: Just to clarify, your Honor -- Mark  
4 Angelov again for Ambac Assurance Corporation -- is your  
5 Honor holding the ruling on Interrogatory 11 in abeyance  
6 pending Thursday?

7 THE COURT: No. I think they've agreed to answer  
8 it.

9 MR. IRWIN: Yes.

10 MR. ANGELOV: Thank you.

11 THE COURT: Yeah. That's what I heard. Okay.  
12 Anything else for today?

13 MR. HACKNEY: So we still have our --

14 THE COURT: Yes. A microphone.

15 MR. HACKNEY: Stephen Hackney on behalf of Syncora,  
16 your Honor. We still have our interrogatory requests of the  
17 city. I will tell you that of the 25 of them, about 18 are  
18 at issue.

19 THE COURT: Um-hmm.

20 MR. HACKNEY: And I know it's been a long day, and  
21 it's very --

22 THE COURT: Will you be here on Thursday?

23 MR. HACKNEY: I will be. I will be.

24 THE COURT: Do you want to deal with them then?

25 MR. HACKNEY: We're at your leisure, your Honor.

1 MR. MARRIOTT: Your Honor, Vince Marriott, EEPK. We  
2 also have ours, and I will be here on Thursday, so --

3 THE COURT: All right.

4 MR. MARRIOTT: -- Thursday would be satisfactory to  
5 me.

6 THE COURT: All right. Let's shoot for that then.  
7 Ms. Fish.

8 MS. FISH: Deborah Fish on behalf of Dexia. I will  
9 be here on Thursday also, your Honor.

10 THE COURT: You have interrogatories to deal with  
11 also?

12 MS. FISH: That's correct.

13 THE COURT: How many do you have?

14 MS. FISH: We only have a couple.

15 THE COURT: A couple. Do you want to deal with a  
16 couple -- do you want to deal with a couple now?

17 MS. FISH: Generally, I'd go after Mr. Marriott,  
18 so --

19 THE COURT: Oh, all right. All right.

20 MS. FISH: -- if that's all right with the Court --

21 THE COURT: All right.

22 MS. FISH: Thank you.

23 THE COURT: Anything else? Sir?

24 MR. BRILLIANT: Allan Brilliant on behalf of Macomb.  
25 Your Honor, do you have a problem with people appearing on

1 Monday by phone who don't have any more discovery disputes?

2 THE COURT: No. You say Monday. You mean Thursday?

3 MR. BRILLIANT: Thursday. I'm sorry.

4 THE COURT: No. My policy is anyone can appear  
5 anytime they like by phone whether they have something they  
6 want to contribute or just want to listen in on.

7 MR. BRILLIANT: Thank you, your Honor.

8 MR. RAMIREZ: Your Honor, good afternoon.

9 THE COURT: Sir.

10 MR. RAMIREZ: This is John Ramirez from Katten  
11 Muchin Rosenman, LLP, on behalf of Deutsche Bank. We also  
12 have a couple of interrogatories that we have some issues  
13 with but would also like to go after Mr. Marriott on  
14 Thursday.

15 THE COURT: Okay. All right. That's fine, too,  
16 then.

17 MR. MONTGOMERY: Your Honor, inquiry. On Thursday,  
18 will you be handling the adversary proceeding matter  
19 separately from the main calendar on Thursday? I believe you  
20 have the city's adversary proceeding on the COPs litigation  
21 on then.

22 THE COURT: I haven't decided the order in which we  
23 will proceed if that's what your question was.

24 MR. MONTGOMERY: It is essentially the question,  
25 your Honor.

1           THE COURT: Yeah. If it's important to you, I can  
2 try to provide a notice of that like tomorrow after I review  
3 the docket.

4           MR. MONTGOMERY: That would be wonderful.

5           THE COURT: Would that be helpful to you?

6           MR. MONTGOMERY: Thank you, your Honor.

7           THE COURT: Yes?

8           MR. MONTGOMERY: Yes, it would be.

9           THE COURT: Okay. Chris, would you remind me to do  
10 that, please? Okay. Thank you. We'll be in recess.

11           THE CLERK: All rise. Court is adjourned.

12           (Proceedings concluded at 4:38 p.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

May 17, 2014

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Lois Garrett